Supreme Court of the United States

OCTOBER TERM, 1959

No. 712

JOYCE C. THORPE, PETITIONER,

vs.

HOUSING AUTHORITY OF
THE CITY OF DURHAM.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE, PETITIONER,

vs.

HOUSING AUTHORITY OF THE CITY OF DURHAM.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

INDEX

	Original	Print
Record from Justice of Peace Court, City of Durham, North Carolina		
Officer's return	7	1
Oath of plaintiff	8	1
Form of summons	9	2
Execution	9	3
Notice of appeal to Superior Court of Durham County	10	4
Order of September 20, 1965	11	4
Proceedings in the Superior Court of Durham County		
Stipulations	11	5
Affidavit of defendant	14	7
Defendant's motion to quash	17	10

RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 14, 1966

	Original	Print
Proceedings in the Superior Court of Durham County—Continued		
Exhibit 1—Dwelling lease	18	11
Exhibit 2—Notice of cancellation of lease	25	18
Judgment (with exceptions)	25	19
Stipulation as to record	31	24
Grouping of exceptions and assignments of error	32	25
Proceedings in the Supreme Court of North Carolina	34	26
Opinion, per curiam	34	26
Judgment	37	29
Clerk's certificate	38	30
Order extending time to file petition for writ of certiorari	39	31
Order allowing certiorari	40	32

[fol. 7]

PROCEEDINGS IN JUSTICE OF PEACE COURT

PROCEEDINGS TO RECOVER POSSESSION OF LAND

HOUSING AUTHORITY OF THE CITY OF DURHAM,

against

JOYCE THORPE.

Justice of the Peace.

Durham Township
Durham County

OFFICER'S RETURNS

On this day I served the within Summons on the defen-
[fol. 8] dant: ..... delivering a copy thereof, with a copy of the oath of the Plaintiff to said Defendant: .....

This 20 day of Sept., 1965

C. E. Evans, Constable; ....., Sheriff.

By ..... D. S.

JUSTICE'S COURT

DURHAM TOWNSHIP

OATH OF PLAINTIFF

Affidavit

Before: H. L. Townsend, Justice of the Peace.

The plaintiff maketh oath, that the defendant entered into possession of a piece of land in said County, located and described as follows: Apartment 38G—Ridgeway Avenue—McDougald Terrace property of Housing Authority of the City of Durham, under written lease from the plain-

tiff, Housing Authority of the City of Durham; that said defendant has failed to comply with the terms of said lease, to wit: written lease specified that either party may terminate upon fifteen (15) days' notice and the defendant, Joyce Thorpe, has received said fifteen (15) days' notice from the plaintiff, and the plaintiff has informed in writing the defendant to the effect that according to the terms of the lease the plaintiff wishes to terminate the lease. However, the defendant has failed and refused to vacate the premises. That the plaintiff has demanded the possession of premises of said defendant, who refuses to surrender it, but holds over; that the estate of the plaintiff is still subsisting, and [fol. 9] the plaintiff asks to be put in possession of the premises.

Housing Authority of the City of Durham, By: J. L. Bennett, Jr., Plaintiff.

Subscribed and sworn to before me, this the 17th day of September, 1965.

H. L. Townsend, Justice of the Peace.

FORM OF SUMMONS TO BE ISSUED BY THE JUSTICE

JUSTICE'S COURT

HOUSING AUTHORITY OF THE CITY OF DURHAM,

against

JOYCE THORPE.

State of North Carolina,
Durham Township,
Durham County.

Summons

Housing Authority of the City of Durham, by J. L. Bennett, Jr., having made and subscribed before me the oath,

a copy of which is above set forth, you are required to appear before me, on the 20th day of September, 1965, at 11:00 o'clock A.M., then and there to answer to the complaint, otherwise judgment will be given that you be removed from the possession of the premises.

Witness my hand and seal, this the 17th day of September, 1965.

H. L. Townsend, Justice of the Peace.

(Seal)

To Joyce Thorpe, Defendant.

EXECUTION

[fol. 10]

JUSTICE'S COURT

HOUSING AUTHORITY OF THE CITY OF DURHAM,

against

JOYCE THORPE.

State of North Carolina.

To any Lawful Officer of Durham County—Greeting:

You are hereby Commanded to remove the within named defendant, all other occupants and all of her belongings from, and put the above named plaintiff in possession of a certain piece of land, described in the plaintiff's affidavit attached hereto.

Return this writ, with a statement of your proceedings thereupon, before me, at Durham, North Carolina, within two days.

Witness my hand and seal, this 20 day of Sept., 1965.

H. L. Townsend, Justice of the Peace.

(Seal)

BEFORE H. L. TOWNSEND, JUSTICE OF THE PEACE

NOTICE OF APPEAL TO SUPERIOR COURT

To H. L. Townsend, a Justice of the Peace for said County—

Take notice, that the defendant in the above action appeals to the Superior Court from the judgment rendered therein by you on the 20th day of September, 1965, in favor of the plaintiff for the possession of the premises belonging to the Housing Authority of The City of Durham at 38-G Ridgeway Avenue, Durham, North Carolina, and that this appeal is founded upon the ground that the said judgment is contrary to law and evidence.

The written notice is given in addition to the notice given in open court upon the rendering of judgment against the [fol. 11] defendant on the 20th day of September, 1965.

Dated this 24th day of September, 1965.

M. C. Burt, Jr., Attorney for Appellant.

BEFORE THE JUSTICE OF THE PEACE

ORDER—September 20, 1965

It appearing that the summons with a copy of the oath of the plaintiff was duly served on the defendant, and whereas the defendant and the plaintiff appeared before me at 1:30 P.M. on the 20th day of September, 1965, and

after hearing the matter and the contentions of the parties, I adjudged that the defendant be removed from the premises described in the oath and affidavit of the plaintiff, and after the Court rendered the above said decision and after an Order of Eviction was entered, the defendant gave notice of appeal in open Court and has posted bond according to the terms of G. S. 42-34;

Now, Therefore, let this matter be placed on the Superior Court Docket for Durham County, North Carolina, and tried according to G. S. 42-34, et seq.

Witness my hand and seal, this 24th day of September, 1965.

H. L. Townsend, Justice of the Peace.

IN THE SUPERIOR COURT OF DURHAM COUNTY

STIPULATIONS

[fol. 12] It is stipulated that during all of the time of the controversy the Housing Authority of the City of Durham was a corporation duly organized under the Housing Authority Law of this State, doing business or transacting its activities here in Durham and was the owner of a property known as McDougald Terrace located here in Durham, which is a housing project operated by the Housing Authority of the City of Durham under its statutory authority and pursuant to its contract with the Federal government as a low-rent housing project; and that on the 11th day of November, 1964, the defendant Joyce C. Thorpe and the Housing Authority of the City of Durham entered into a dwelling lease which is introduced as Plaintiff's Exhibit 1 (a copy of same is substituted in lieu of the original); and that pursuant to this lease and under and by virtue of this lease the defendant Joyce C. Thorpe moved into an apartment in the McDougald Terrace project, Apartment No. 38-G; that on the 11th day of August, 1965, the Housing

Authority of the City of Durham by and through C. S. Oldham, Executive Director, duly delivered to the defendant Joyce C. Thorpe a notice which is Plaintiff's Exhibit 2, and introduced into evidence, and that she did receive that notice on the 12th day of August, 1965.

It is further stipulated that the Housing Authority of the City of Durham did not give to this defendant a reason why the Housing Authority was terminating the lease; that is to say, for failing to renew her lease, and that the defendant did request a hearing before the date of the eviction; that although the Housing Authority had a meeting on the subject the defendant was not given a hearing in which she herself was present and reasons assigned to her.

It is stipulated that the defendant has not vacated the apartment and refuses to do so; that this matter was brought on in a summary ejectment proceeding.

[fol. 13] It is stipulated that the defendant is twenty-five years of age.

It is further stipulated that on the 10th day of August, 1965, defendant was elected President of the Parents' Club, which is a club composed of residents of McDougald Terrace, and it is alleged by the defendant that the reason she is being evicted is due to defendant's participation in the organization of the Parents' Club in the McDougald Terrace.

It is further stipulated that this matter was duly heard in an action before a Justice of the Peace, and it was duly appealed, the defendant having provided bond for the rent as provided by law, and it is presently in the Superior Court on appeal from a judgment by the Justice of the Peace.

It is stipulated and agreed by plaintiff and defendant that this cause shall be heard by the Judge Presiding without a jury, and the trial by a jury is expressly waived by the plaintiff and defendant in this cause, and it is stipu-

lated and agreed that the Judge Presiding may hear and determine this cause by finding facts based on the stipulations herein entered and any affidavits entered into the record and draw therefrom conclusions of law.

It is agreed by counsel for plaintiff and counsel for the defendant that the affidavit of Mrs. Thorpe may be signed hereafter.

It is stipulated and agreed that if Mr. C. S. Oldham, the Executive Director of the Housing Authority of the City of Durham, were present and duly sworn and were testifying, he would testify that whatever reason there may have been, if any, for giving notice to Joyce C. Thorpe of the termination of her lease, it was not for the reason that she was elected president of any group organized in McDougald Terrace, and specifically it was not for the reason that she was elected president of any group organized [fol. 14] in McDougald Terrace on August 10, 1965, and not for any of the other reasons set forth in the affidavit, and that further he would testify that the reason, if any, for giving her notice and for her eviction was not because of her efforts to organize the tenants of McDougald Terrace, that C. S. Oldham did in fact so testify in the hearing before the Justice of the Peace when this case was originally heard before the Justice of the Peace.

IN THE SUPERIOR COURT OF DURHAM COUNTY

AFFIDAVIT OF DEFENDANT

The undersigned Defendant, being duly sworn, deposes and says:

I. That the plaintiff, Housing Authority of the City of Durham, is a domestic corporation, duly incorporated and existing under the laws of the State of North Carolina.

II. That the defendant is a resident of the City of Durham, County of Durham, State of North Carolina, residing at 38-G Ridgeway Avenue, McDougald Terrace.

III. That C. S. Oldham is a resident of the City of Durham, County of Durham, State of North Carolina, and is employed by the plaintiff, Housing Authority of the City of Durham, as its managing director.

IV. That 38-G Ridgeway Avenue is a dwelling in McDougald Terrace, a public housing project in the City of Durham, administered by the plaintiff.

V. That the plaintiff and the defendant entered into a written lease of the premises known as 38-G Ridgeway Avenue on the 11th day of November, 1964; that said lease provides, among other things, that "The Management may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last [fol. 15] day of the term."

VI. That on the 12th day of August, 1965, the defendant received an eviction notice from the plaintiff, dated August 11, 1965, requiring that she vacate the premises within 15 days, said eviction notice failing to state the reason for said eviction.

VII. That the defendant is informed and believes, and therefore alleges, that her eviction was prompted by C. S. Oldham, Manager of the Housing Authority, who wants to get her out of the project because of her efforts to organize the tenants of McDougald Terrace; that she was elected president of a group organized in McDougald Terrace on August 10, 1965, and received a letter from the Housing Authority dated August 11, 1965, ordering her to move.

VIII. That the defendant is informed and believes, and therefore alleges, that the Housing Authority of the City of Durham is an administrative agency; that administrative agencies may not deprive a person of his constitutionally protected rights of life, liberty and property without due process of law, to wit: Notice and hearing which is adequate and fair; that the right to such a hearing

is a rudiment of fair play assured as a minimum requirement by the Fourteenth and Fifteenth Amendments, as well as by the due process clause of the Constitution of North Carolina.

IX. That the defendant, through her attorneys, by phone and by a letter dated August 25, 1965, requested a hearing in this regard to determine the reason for her eviction; that said request was denied.

X. That on the 1st day of September, 1965, the Housing Authority of the City of Durham and C. S. Oldham met with M. C. Burt, Jr., Attorney for the defendant, at which time the defendant, through her attorney, again [fol. 16] requested a hearing to determine the reason for her eviction; that the Chairman of the Housing Authority informed the attorney for the defendant that their rules and regulations make no provisions for a hearing and that a hearing could not be had and was therefore denied.

XI. That, upon information and belief, on the 1st day of September, 1965, the Housing Authority of the City of Durham and C. S. Oldham met with Detective Frank McRae, of the Police Department of the City of Durham, who supplied them with certain information allegedly uncovered during the investigation of her conduct; that neither the defendant nor her attorney were present; that at no time has the defendant or her attorney ever been confronted by her accuser and allowed to question him regarding the charges, or to offer any proof of the falseness of the charges.

XII. That, upon information and belief, on the 1st day of September, 1965, the plaintiff was informed by defendant's counsel that in his opinion the Constitution of the United States compelled them to inform the defendant of the reasons for her eviction and grant a hearing; that upon information and belief, said plaintiff has repeatedly refused to grant such rights voluntarily.

XIII. That said action by the plaintiff herein is taken under Section 157-9 of the General Statutes, which authorizes the Housing Authority "to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by the city," said action constituting State Action and a violation of plaintiff's constitutional rights under color of State law.

XIV. That the defendant and her family are unable to find decent, safe, and sanitary housing within her financial reach, although making every reasonable effort to do so; that she, for this reason, should be allowed to remain in [fol. 17] the Housing Authority Project.

This 20th day of October, 1965.

Joyce C. Thorpe, Defendant.

(Verified by Joyce C. Thorpe Oct. 20, 1965.)

In the Superior Court of Durham County

Motion to Quash

Now Comes the defendant and moves to quash the proceedings herein upon the grounds set forth in her duly verified affidavit, which is made a part hereof and includes the following:

I. That the tenant in a Public Housing Project has a *right* to her apartment and a deprivation of that right without a hearing violates due process of law as guaranteed by the 14th Amendment. *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (1961).

II. That the Housing Authority of the City of Durham, as a public administrative agency, is an arm of the State; that its action necessarily involved State action; that the State may not deprive a public housing tenant of her in-

terest in the leasehold unless the means conform with due process and that, *de minimis,* due process requires a hearing.

III. That the defendant's eviction primarily resulted from her community activities as an organizer of tenants, thus constituting an unconstitutional abridgement of her freedom of expression and a denial of equal protection of the laws. *Sherbert* v. *Verner,* 374 US 398, 10 L. ed. 2d 965; *Speiser* v. *Randall,* 357 US 513, 2 L.ed. 2d 1460; *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (1961).

Wherefore, this defendant moves the Court that the proceedings herein be quashed and judgment be given against this plaintiff.

Respectfully submitted this 20th day of October, 1965.

[fol. 18]

McKissick & Burt, By: M. C. Burt, Jr., Attorneys for Defendant.

IN THE SUPERIOR COURT OF DURHAM COUNTY

EXHIBIT #1—DWELLING LEASE

486-D

THE HOUSING AUTHORITY OF THE CITY OF DURHAM, N. C., (hereinafter called the "Management"), in consideration of the rental herein reserved and of the statements made by Joyce C. Thorpe (hereinafter called the "Tenant") as set forth in his signed application, hereby leases to the Tenant and the Tenant hereby hires and takes the premises in McDougald Terrace (hereinafter called the "Project") designated as Apartment No. 38-G Ridgeway Ave. for the term beginning November 11, 1964, and terminating at midnight November 30, 1964, at a rental of $19.33 for said term, payable in advance on the first day of said term.

The rental for these premises shall be based on the current family composition and family income as have been represented to the Management by statements of the tenant and other verifications on file in the Management Office, and shall be in conformance with the approved current rent schedule which has been adopted by the Management for the operation of this Project. This lease shall be automatically renewed for successive terms of one month each at the rental last entered and acknowledged below:

[fol. 19]

Apt. No.	Date	Contract Rent	Signature of Tenant	Signature of Management's Witness
38-G	12-1-64	$29.00	Joyce C. Thorpe	.....

Provided, there is no change in the income or composition of the family of the tenant and no violation of the terms hereof. In event of any change in the composition or income of the family of the tenant, rent for the premises shall automatically conform to the rental rates established in the approved current rent schedule which has been adopted by the Management for the operation of this Project and shall be chargeable on the basis established in Section 2 hereof.

Rent shall be payable in advance on the first day of each calendar month. This lease may be terminated by the Tenant by giving to Management notice in writing of such termination 15 days prior to the last day of the term. The Management may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last day of the term. Provided, however, that this paragraph shall not be construed to prevent the termination of this lease by Management in any other method or for any other cause set forth in this lease.

The Tenant shall deposit with the Management the sum of Twenty Dollars ($20.00) as security for the Tenant's

faithful performance of all the terms, covenants, and conditions of this lease, and as security to the Management for the return of removable articles on the premises, which security is to remain in possession of the Management until after said premises have been vacated by the Tenant and then be returned to the Tenant, without interest, if all terms, covenants, and conditions of this lease to be performed by the Tenant have been fully performed. The said [fol. 20] deposit shall not be considered as liquidated damages, but shall be subject to the discharge and payment of all claims of the Management and obligations of the Tenant hereunder, notwithstanding that this lease may have been terminated or the Tenant dispossessed under any of the provisions hereof.

1. The Tenant agrees:

(a) To pay the rent at the Management Office when due without requiring a statement; and to pay, when billed, for any damage done to the premises except damages beyond the control of the Tenant and his family.

(b) To pay to Management upon demand of Management such penalty in the nature of increased rent or otherwise such amounts as Management may charge based on a determination by Management that the Tenant has consumed or is consuming electric energy, gas or water in excess of a normal amount to be fixed and determined by Management.

(c) Not to assign this lease; nor to sublet or transfer possession of the premises; nor to give accommodations to boarders or lodgers; nor to use or permit the use of the dwelling for any other purpose than a private dwelling solely for the Tenant and his family as reported.

(d) To quit and surrender the premises at the expiration of this lease in good order and repair, reasonable wear and tear excepted.

(e) To keep the premises in a clean and sanitary condition; to maintain the yard in a neat and orderly manner; to assist in the maintenance of the project; not to use the premises for any illegal or immoral purposes; not to keep dogs or other pets; nor to make any repairs or alterations without the written [fol. 21] consent of the Management; not to display any signs whatsoever; not to use tacks, nails, or screws or other fasteners in any part of the premises except in a manner prescribed by the Management; and to notify the Management promptly of the need of any repair to the premises.

(f) To follow all rules or regulations prescribed by the Management concerning the use and care of the premises and of any common or community space in the Project including walks, drives, playgrounds, community rooms, etc.

(g) To permit the Management or its representatives to enter the premises during all reasonable hours to examine the same or to make such repairs, alterations, or betterments as may be deemed necessary or to show the premises for leasing.

(h) To submit to the Management at least once each year upon the request of the Management a signed statement in such form as the Management may request, setting forth the facts as to the income and assets of himself and his family and as to the number and ages of members of his family.

(i) To promptly notify the Management of any increase or decrease in family income or of any change in family composition or assets.

2. If any of the statements submitted by the Tenant as required herein, or facts obtained by Management independently, show that the family income or composition has changed since the time of admission or preceding statement or report, as the case may be, so as to require a different rent on the basis of the approved rent schedule of the Management, then the Management will require the payment of, and the Tenant agrees to pay, [fol. 22] the rental established for the higher or lower grade appropriate to family income or composition.

   If, under the procedure of this section, an increase in rent is indicated because of change in the income or composition of the family, the Tenant hereby agrees that he will be liable for any and all rent due by reason of such changed status beginning with the first day of the month following that in which the change occurred, and further agrees that he will be subject to eviction in the event such rent is not paid.

   If, under the procedure in this section, a decrease in rent is indicated under the approved rent schedule of the Management, such decrease will be effective at such time and in such amount as Management may determine, provided that such decrease will not result in a per unit per month rental income which is lower than the lowest achievable rental which has been established for the Project.

3. If the Management determines, after submission by the Tenant of any of the statements required herein, that the annual income or assets of the Tenant and his family exceeds the limits established for eligible occupancy, the Management may terminate this lease at the end of any calendar month by giving the Tenant not less than 30 days' prior notice in writing. At the expiration of the time stated in said notice, the Management's representatives shall have the right immediately to re-enter the premises and remove all persons and property therefrom, and the Tenant hereby expressly waives all

notices required by law to terminate his tenancy and waives any and all legal proceedings to recover possession of said premises, and agrees that upon any such termination the representatives of the Management may immediately re-enter said premises and dispossess the [fol. 23] Tenant without legal notice or the institution of any legal proceedings whatsoever.

If, at any time during the period of this lease or any renewal thereof, his family no longer conforms to the Occupancy limits applicable to the dwelling unit occupied, as established by the Management, they shall move into a unit of appropriate size as designated by Management when a vacancy exists. If no unit of appropriate size is available in the Project within six (6) months after the change in the composition of the Tenant's family, the Tenant and his family may be required to move from the premises in accordance with the terms of this lease.

4. In the event of misrepresentation of any material fact in the application of the Tenant or in any statement submitted to the Management by the Tenant as required herein, or if the Tenant fails to comply with any of the provisions of this lease, it shall be automatically terminated at the option of the Management and the Management shall have the right immediately to re-enter the premises and remove all persons therefrom, and the Tenant hereby expressly waives all notice required by law to terminate this lease and waives any and all legal proceedings to recover possession of said premises and agrees that upon any such failure the Management may immediately re-enter said premises and dispossess the Tenant without legal notice or the institution of any legal proceedings whatsoever.

5. Any notice required by law or otherwise will be sufficient if delivered to the Tenant personally or sent by mail to the premises or affixed to the door of the prem-

ises. Notice to the Management must be in writing and delivered to the Housing Manager personally at the Management Office.

[fol. 24] 6. The failure or omission of the Management to terminate this lease for any cause given above shall not destroy the right of the Management to do so later for similar or other causes.

7. The Management agrees to furnish reasonable quantities of electricity, and gas, and water; but shall not be liable for failure to supply any of these services for any cause whatsoever. A penalty charge will be made quarterly for abusive use in excess of the quantities established and on record in the Management Office.

8. Neither the Management nor any of its representatives or employees shall be liable for damage or loss from theft or from any other cause whatsoever to the property of (i) the Tenant, (ii) any member of the Tenant's family, or (iii) any of the Tenant's visitors or guests, or for injury to person of Tenant, his family or visitors.

9. The Tenant hereby warrants that neither he nor any person who is to occupy the leased premises is a member of an organization designated by the Attorney General of the United States as subversive. The tenant agrees that if this warranty is false or if he, or any person who is to occupy the leased premises, becomes or continues to be a member of any organization now or hereafter so designated, he will promptly vacate the premises.

This lease evidences the entire agreement between the Management and the Tenant and no changes shall be made except in writing.

Housing Authority of
the City of Durham, N.C.

By: E. Gilliard

Tenant Joyce C. Thorpe

Tenant .....

[fol. 25] Executed this 11 day of November, 1964, in the presence of E. Gilliard.

In the Superior Court of Durham County

Exhibit #2—Notice of Cancellation of Lease

HOUSING AUTHORITY OF THE CITY OF DURHAM, N. C.

MEMORANDUM

From: C. S. Oldham

Date: August 11, 1965

To: Mrs. Joyce C. Thorpe
Apt. 38-G, Ridgeway Avenue

Copies to: Mrs. Evelyn Gilliard
Mr. James L. Bennett, Jr.

Your Dwelling Lease provides that the Lease may be cancelled upon fifteen (15) days written notice. This is to notify you that your Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy.

C. S. Oldham
Executive Director

CSO:jhe

IN THE SUPERIOR COURT OF DURHAM COUNTY

JUDGMENT (WITH EXCEPTIONS)—October 26, 1965

This cause, coming on to be heard, and being heard before the undersigned, Honorable William Y. Bickett, Judge Presiding, at the October Civil Term of Durham County Su- [fol. 26] perior Court, upon plaintiff and defendant having expressly waived trial by jury, and having stipulated and agreed in open Court that this matter be heard without a jury by the Judge, and that the Judge find the facts upon stipulations made and affidavit filed, and render thereon conclusions of law and judgment in the cause; and the Court, after hearing argument of counsel and considering and weighing the stipulations made in this action and the affidavit filed therein, finds facts as follows:

(1) That the Housing Authority of the City of Durham is and was during all of the times involved in this action, and specifically on the 11th of November, 1964, and thereafter, to the present date, a corporation, organized and operating under and by virtue of the laws of the State of North Carolina—specifically, the Statute known and designated as the Housing Authorities Law of the State of North Carolina;

(2) That during said times C. S. Oldham was the Executive Director of said Housing Authority of the City of Durham and charged with responsibility for management of the properties of the Housing Authority of the City of Durham located in the City of Durham;

(3) That on the 11th day of November, 1964, and thereafter continuously until this date, the Housing Authority of the City of Durham was and is the owner of real property known as the McDougald Terrace Housing Project, located in the City of Durham, and specifically a dwelling apartment located in said housing project, designated and known as No. 38-G Ridgeway Avenue;

(4) That on the 11th day of November, 1964, the plaintiff and the defendant entered into and duly executed a lease contract, wherein the Housing Authority of the City of Durham leased to the defendant Apartment No. 38-G Ridgeway Avenue in said McDougald Terrace Project for the term beginning November 11, 1964, and terminating at Mid- [fol. 27] night November 30, 1964, at a rental of $19.33 for said term, payable in advance on the first day of said term; that said lease contract further provided that the rental for these premises would be based on the current family composition and family income as were represented to the management of the Housing Authority of the City of Durham, and would be in conformance with the approved current rent schedule which had been adopted by the Housing Authority of the City of Durham for the operation of the project; that the lease further provided that the lease would be automatically renewed for successive terms of one month each at a rental of $29.00 a month, provided there was no change in the income or composition of the family and no violation of the terms of the lease; that the lease further provided that the rent should be payable in advance on the first day of each calendar month, and that the lease could be terminated by the tenant by giving to the Housing Authority of the City of Durham notice in writing of such termination fifteen (15) days prior to the last day of the term, and that management could terminate the lease by giving to the tenant notice in writing of such termination fifteen (15) days prior to the last day of the term; that there was no provision in said lease whereby it was agreed that the Housing Authority of the City of Durham would give the defendant any reason for termination of said lease or that any reason for the termination of said lease was required, and there was no provision in said lease that any hearing should be held by the Housing Authority or any other agency or person with respect to any decision by the Housing Authority of the City of Durham to terminate said lease and to give the defendant notice in writing of such termination, as was provided in the language of the lease;

(5) That the defendant, upon her execution of said lease, entered into and occupied said Apartment No. 38-G Ridge- [fol. 28] way Avenue of the McDougald Terrace Project, owned by the plaintiff, Housing Authority of the City of Durham, and does now continue to occupy said dwelling apartment;

(6) That on the 12th day of August, 1965, the plaintiff, Housing Authority of the City of Durham, gave to the defendant, Joyce C. Thorpe, notice in writing as follows: "Your Dwelling Lease provides that the Lease may be cancelled upon fifteen (15) days' written notice. This is to notify you that your Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy," and that the defendant duly received said notice to vacate on said date;

(7) That the defendant failed and refused to vacate said premises and continues to occupy same;

(8) That the Housing Authority of the City of Durham duly brought an action in summary ejectment before the Justice of the Peace Court in Durham County, and after hearing before said Court judgment was duly entered requiring the defendant, Joyce C. Thorpe, to vacate said premises and ordering any duly constituted officer of Durham County to remove the defendant from said premises;

(9) That the defendant gave notice of appeal to the Superior Court and posted bond, pursuant to the provisions of G. S. 42-34;

(10) That the plaintiff, Housing Authority of the City of Durham, acting through C. S. Oldham, its Manager and Executive Director, gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected President of a group organized in McDougald Terrace on August 10, 1965; that these were not the reasons said notice was given and eviction undertaken;

Exception #1

[fol. 29] (11) That the plaintiff, Housing Authority of the City of Durham, gave no reason to the defendant for giving her notice that the lease was being terminated at the end of the term, nor did the plaintiff or any of its agents or employees conduct a hearing at which the defendant was present or invited to be present to inquire into reasons for terminating her lease;

(12) That the defendant did request a hearing on this matter but had no hearing other than that before the Justice of the Peace in this eviction action and in this Court;

(13) That the plaintiff, through its agents and employees, did inform the defendant that the plaintiff was not required to give or assign reasons to the defendant for the termination of her lease, and has not given to her or communicated to her any reason for so doing, other than that they desired to terminate her lease;

Wherefore, the Court concludes, as a matter of law, as follows:

(1) That the defendant, during August of 1965, occupied the premises owned by the plaintiff, Housing Authority of the City of Durham, known and designated as Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, under and pursuant to the terms and provisions of a lease, whereby she was tenant from month to month;

(2) That by giving the defendant written notice of termination of her lease on the 12th day of August, 1965, the plaintiff effectively terminated the tenancy of the lease of the defendant as of the 31st day of August, 1965;

Exception #2

(3) That the continued occupancy of said premises by the defendant after the 31st day of August, 1965, was without right and was wrongful and against the express direc-
[fol. 30] tion of the owner of said premises to vacate and in violation of said owner's right to possession of said premises;

Exception #3

(4) That the Housing Authority of the City of Durham did not owe a duty to communicate or give to the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject;

Exception #4

(5) That the Housing Authority of the City of Durham acted in conformity with and in accordance with the terms and provisions of the lease entered into with the defendant, and the provisions of the laws of the State of North Carolina, in terminating her lease;

(6) That the plaintiff is entitled to the possession of the premises described hereinabove, and that the defendant is in the wrongful possession thereof;

Exception #5

Now, Therefore, It Is Ordered, Adjudged And Decreed that the defendant be removed from the said premises known as Apartment No. 38-G Ridgeway Avenue, and the plaintiff put in possession thereof, and that the plaintiff have and recover from the defendant the sum of Fifty-eight and No/100 ($58.00) Dollars, and a further amount, if any, as reasonable rent for said premises from the 1st day of November, 1965, until the premises are vacated by the defendant, and the defendant shall pay the costs to be taxed by the Clerk.

This 26th day of October, 1965.

William Y. Bickett, Judge Presiding.

IN THE SUPERIOR COURT OF DURHAM COUNTY

APPEAL ENTRIES

The plaintiff and the defendant, having waived the right of a trial by jury in open Court, and agreeing upon the [fol. 31] Court finding the facts, conclusions of law, and enter a judgment, the Court further found the facts, con-

clusions of law and signing the judgment in this cause, the defendant hereby excepts to findings of facts, conclusions of law and the judgment as appear in the record.

Thereupon the defendant, through her counsel, gave notice in open Court of her appeal to the Supreme Court of North Carolina; further notice waived. The defendant is allowed sixty days in which to prepare and serve statement of case on appeal and the plaintiff is allowed thirty days thereafter to serve countercase or exceptions.

Stay of execution bond was fixed at $348.00, the same being the amount of the stay of execution bond in effect on appeal from the Justice of the Peace Court to the Superior Court, which is continued in effect.

Appeal bond is fixed at $200.00.

This the 5th day of November, 1965.

William Y. Bickett, Judge Presiding.

IN THE SUPERIOR COURT OF DURHAM COUNTY

STIPULATION AS TO RECORD

It is stipulated and agreed by Counsel for the Plaintiff and Counsel for the Defendant that the foregoing constitutes the statement of case on appeal and that the same was prepared and served and service of same accepted in apt time.

Edwards & Manson, By: Daniel K. Edwards, Attorneys for Plaintiff;

McKissick & Burt, By: M. C. Burt, Jr.; Attorneys for Defendant.

[fol. 32]

IN THE SUPERIOR COURT OF DURHAM COUNTY

GROUPING OF EXCEPTIONS AND ASSIGNMENTS OF ERROR

1. For that the Court erred in finding as a matter of fact that the plaintiff Housing Authority of the City of Durham, acting through C. S. Oldham, its Manager and Executive Director, gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected President of a group organized in the McDougald Terrace on August 10, 1965; that these were not the reasons said notice was given and eviction undertaken, as shown by Exception #1 (R p 28).

2. That the Court erred in finding as a matter of law that by giving written notice of termination of her lease on the 12th day of August, 1965, the plaintiff effectively terminated the tenancy of the lease of the defendant as of the 31st day of August. As shown by Exception #2 (R p 29).

3. For that the Court erred in finding as a matter of law that the continued occupancy of the premises by said defendant after the 31st day of August, 1965, was without right and was wrongful and against the express direction of the owner of said premises to vacate and in violation of said owner's right to possession of said premises. As is shown by Exception #3 (R pp 29-30).

4. For that the Court erred in finding as a matter of law that the Housing Authority of the City of Durham did not owe duty to communicate or give the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject. As shown by Exception #4 (R p 30).

5. For that the Court erred in finding as a matter of law that the plaintiff is entitled to the possession of the [fol. 33] premises, and that the defendant is in the wrongful possession thereof. As shown by Exception #5 (R p 30).

[fol. 34]

IN THE NORTH CAROLINA SUPREME COURT

HOUSING AUTHORITY OF THE CITY OF DURHAM

v.

JOYCE C. THORPE

OPINION, PER CURIAM

Appeal by defendant from Bickett, J., October 1965 Civil Session of Durham.

The plaintiff instituted summary ejectment proceedings before H. L. Townsend, Justice of the Peace, to remove the defendant from Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, in the city of Durham. From a judgment in favor of the plaintiff in the Court of the Justice of the Peace, the defendant appealed to the superior court where the matter was heard *de novo* by the court without a jury. The court made findings of fact, each of which is supported by stipulations or by the evidence in the record. The material facts so found may be summarized as follows:

The plaintiff, a corporation organized and operating under the laws of the State of North Carolina, is the owner of the tract of land known as the McDougald Terrace Housing Project in the city of Durham, which includes Apartment No. 38-G Ridgeway Avenue. On 11 November 1964 the plaintiff and the defendant entered into a lease contract whereby the plaintiff leased to the defendant the said apartment for a term beginning 11 November 1964 and terminating at midnight 30 November 1964. The lease provided that it would be automatically renewed for successive terms of one month each. It further provided that the lease could be terminated by either party by giving to

the other written notice of such termination 15 days prior to the last day of the term. There was no provision in the lease requiring the lessor to give to the lessee any reason for its decision to terminate the lease or requiring that any hearing be held by the plaintiff, or by any other person or agency, with respect to such decision.

[fol: 35] The defendant occupied the apartment pursuant to the lease. On 12 August 1965 the plaintiff gave, and the defendant received, a written notice that the lease was cancelled effective 31 August 1965 and that at such time the plaintiff would be required to vacate the premises. The plaintiff gave no reason to the defendant for its decision to terminate the lease, advising the defendant that it was not required to do so. The defendant requested a hearing but the plaintiff did not conduct any hearing at which the defendant was present. Whatever may have been the plaintiff's reason for terminating the lease, it was neither that the defendant had engaged in efforts to organize the tenants of McDougald Terrace nor that she was elected president of a group which was organized in McDougald Terrace on 10 August 1965. The defendant refused to vacate the premises.

Upon these findings, the court concluded that the plaintiff terminated the lease as of 31 August 1965; that the occupancy of the premises by the defendant after such date was wrongful and in violation of the plaintiff's right to possession; that there was no duty upon the plaintiff to give to the defendant any reason for its termination of the lease or to hold any hearing upon the matter; and that the plaintiff was entitled to the possession of the premises and the defendant was in wrongful possession thereof.

The court, therefore, gave judgment that the defendant be removed from the premises, that the plaintiff be put in possession thereof and that the plaintiff have and recover from the defendant $58.00 plus a reasonable rent for the premises from and after 1 November 1965 until the same

are vacated, together with the costs of the action. From this judgment the defendant appeals.

M. C. Burt, R. Michael Frank, Jack Greenberg, Sheila Rush, Edward V. Sparer of Counsel for defendant appellant.

Daniel K. Edwards for plaintiff appellee.

PER CURIAM. The plaintiff is the owner of the apartment in question. The defendant has no right to occupy it except [fol. 36] insofar as such right is conferred upon her by the written lease which she and the plaintiff signed. This lease was terminated in accordance with its express provisions at midnight 31 August 1965. With its termination, all right of the defendant to occupy the plaintiff's property ceased. Since that date the defendant has been and is a trespasser upon the plaintiff's land.

The defendant having gone into possession as tenant of the plaintiff, and having held over without the right to do so after the termination of her tenancy, the plaintiff was entitled to bring summary ejectment proceedings against her to restore the plaintiff to the possession of that which belongs to it. G.S. 42-26; Murrill v. Palmer, 164 NC 50, 80 SE 55. It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease.

Having continued to occupy the property of the plaintiff without right after 31 August 1965, the defendant, by reason of her continuing trespass, is liable to the plaintiff for damages due to her wrongful retention of its property and for the costs of the action. G.S. 42-32; McGuinn v. McLain, 225 NC 750, 36 SE 2d 377; Lee, North Carolina Law of Landlord and Tenant, § 18.

No Error.

Moore, J., not sitting.

[fol. 37]

IN THE SUPREME COURT OF NORTH CAROLINA

HOUSING AUTHORITY OF THE CITY OF DURHAM

VS.

JOYCE C. THORPE

JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court, Durham County:

Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is adjudged by the Court here that the opinion of the Court, be certified to the said Superior Court, to the intent that the proceedings be had therein in said cause according to law as declared in said opinion.

And it is considered and adjudged further, that the defendant and surety to the appeal bond, C. C. Malone, Sr. do pay the costs of the appeal in this Court incurred, to wit, the sum of Twenty-One and 40/100 dollars ($21.40), and execution issue therefor. Certified to Superior Court this 6th day of June 1966.

A True Copy

Adrian J. Newton, Clerk of the Supreme Court, By: Kathryn W. Bartholomew, Deputy Clerk.

[fol. 38]

SUPREME COURT OF NORTH CAROLINA

CLERK'S CERTIFICATE

Appeal docketed	8 April 1966
Case argued	10 May 1966
Opinion filed	25 May 1966
Final judgment entered	25 May 1966

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and the proceedings in the above entitled case, as the same now appear from the originals on file in my office.

I further certify that no petition to rehear has been filed, and that the time for filing such petition, under the rules of this Court, has expired.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this 27th day of July, 1966.

(Seal)

Adrian J. Newton, Clerk of the Supreme Court, By: Carolyn J. Dalton, Deputy Clerk.

[fol. 39]

SUPREME COURT OF THE UNITED STATES

No. .....—October Term, 1966

JOYCE C. THORPE, Petitioner,

vs.

HOUSING AUTHORITY OF THE CITY OF DURHAM

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 21, 1966.

William J. Brennan, Jr., Associate Justice of the Supreme Court of the United States.

Dated this 12 day of August, 1966

[fol. 40]

SUPREME COURT OF THE UNITED STATES

No. 712—October Term, 1966

JOYCE C. THORPE, Petitioner,

v.

HOUSING AUTHORITY OF THE CITY OF DURHAM

ORDER ALLOWING CERTIORARI—December 5, 1966

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S.
FILED
OCT 21 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
MICHAEL MELTSNER
CHARLES H. JONES, JR.
SHEILA RUSH JONES
10 Columbus Circle
New York, New York

M. C. BURT
213½ West Main Street
Durham, North Carolina

Attorneys for Petitioner

Of Counsel:

EDWARD V. SPARER
MARTIN GARBUS
HOWARD THORKELSON

INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Question Presented	2
Constitutional and Statutory Provisions Involved	2
Statement	3
How the Federal Questions Were Raised and Decided Below	6
REASONS FOR GRANTING THE WRIT	
The Question of the Right of Tenants of Public Housing to a Fair Hearing on the Reasons for Eviction Is of National Importance	7
Conflict Between the Decisions of This Court and Judgment Below as to the Right to a Hearing Necessitates Resolution of the Issue by This Court	14
CONCLUSION	20
APPENDIX I	1a
APPENDIX II	5a
APPENDIX III	11a

Table of Cases

PAGE

Brand v. Chicago Housing Authority, 120 F. 2d 786 (7th Cir. 1941) 19
Brown v. Board of Education, 347 U. S. 483 7
Burton v. Wilmington Parking Authority, 365 U. S. 715 16

Chicago Housing Authority v. Blackman, 4 Ill. 2d 319, 122 N. E. 2d 522 (1954) 19
Cramp v. Board of Public Instruction, 368 U. S. 278 17

Detroit Housing Commission v. Lewis, 226 F. 2d 180 (6th Cir. 1955) 16
Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961), cert. denied, 368 U. S. 930 .....15, 17

Frost Trucking Co. v. R. R. Com., 271 U. S. 583 17

Gideon v. Wainwright, 372 U. S. 335 7
Greene v. McElroy, 360 U. S. 474 14
Griffin v. Illinois, 351 U. S. 12 7

Holt v. Richmond Redevelopment and Housing Authority (E. D. Va., C. A. No. 4746, Sept. 7, 1966) 19
Housing Authority of Los Angeles v. Cordova, 130 Cal. App. 2d 883, 279 P. 2d 215 (App. Dept., Superior Ct., 1955) 19
Housing Authority of City of Pittsburgh v. Turner, 201 Pa. Super. 62, 191 A. 2d 869 (Superior Ct. Pa. 1963) 19

Interstate Commerce Commission v. Louisville and N. R. Co., 227 U. S. 88 15

PAGE

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123 ..... 14, 18

Knight v. State Board of Education, 200 F. Supp. 174 (M. D. Tenn. 1961) 15
Kutcher v. Housing Authority of Newark, 20 N. J. 181, 119 A. 2d 1 (1955) 19
Kwong Hai Chew v. Colding, 344 U. S. 590 16

Lawson v. Housing Authority of City of Milwaukee, 270 Wisc. 269, 70 N. W. 2d 605 (1955), cert. denied, 350 U. S. 882 (1955) 19

Rudder v. United States, 226 F. 2d 51 (D. C. Cir. 1955) 16, 19

Schware v. Board of Bar Examiners, 353 U. S. 232 15
Shelton v. Tucker, 364 U. S. 479 17
Sherbert v. Verner, 374 U. S. 398 17
Slochower v. Board of Education, 350 U. S. 551 14
Smith v. Holiday Inns of America, 336 F. 2d 630 (6th Cir. 1964) 16
Southern Railroad Co. v. Virginia ex rel. Shirley, 290 U. S. 190 15

Torcaso v. Watkins, 367 U. S. 488 17

United States ex rel. Knauff v. Shaughnessy, 338 U. S. 537 16

Walton v. City of Phoenix, 69 Ariz. 26, 208 P. 2d 309 (1949) 19

PAGE

Wieman v. Updegraff, 344 U. S. 183 17
Williams v. City of Ypsilanti (D. Mich., C. A. No. 28936) 19
Woods v. Wright, 334 F. 2d 369 (5th Cir. 1964) 15

FEDERAL STATUTES AND REGULATIONS

28 U. S. C. §1257(3) 2
42 U. S. C. §1401 ..... 2, 10, 12
42 U. S. C. §1402 ..... 10, 13
42 U. S. C. §1409 12
42 U. S. C. §1410 12
42 U. S. C. §1411 ..... 12, 18
42 U. S. C. §1411c 18
42 U. S. C. §1415 10
The Criminal Justice Act of 1964, 78 Stat. 552, 18 U. S. C. §3006A 7
The Economic Opportunity Act of 1964, 78 Stat. 508 7
United States Housing Act of 1937 ..... 10, 12
Public Housing Administration, Consolidated Annual Contributions Contract, Part I, Sec. 206, Admission Policies, PHA 3010, p. 8 12

STATE STATUTES AND REGULATIONS

Chap. 157, Art. 1, Gen. Stat. of North Carolina 2, 3, 10
§157-2, Gen. Stat. of North Carolina 10

PAGE

§157-4, Gen. Stat. of North Carolina 10

§157-9, Gen. Stat. of North Carolina 3, 10, 12

New York Housing Authority Regulations, 9N1287, §1a(7) 11

OTHER AUTHORITIES

Bibliography of Selected Readings in Law and Poverty, in Conference Proceedings, *National Conference on Law and Poverty* (1965) 8

Conference Proceedings, *The Extension of Legal Services to the Poor* (1964) 8

Friedman, *Public Housing and the Poor: An Overview,* 54 Calif. L. Rev. 642 (1966) 10

Handler, *Controlling Official Behavior in Welfare Administration,* 54 Calif. L. Rev. 479 (1966) 8

Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs,* 54 Calif. L. Rev. 567 (1966) 9

O'Neil, *Unconstitutional Conditions: Welfare Benefits with Strings Attached,* 54 Calif. L. Rev. 443 (1966) .. 9

Poverty, Civil Liberties, and Civil Rights: A Symposium, 41 New York U. L. Rev. 328 (1966) 8

Property Rights and the Low-Income Tenant: Law as an Instrument of Social Reconstruction. Institute for Policy Studies (mimeo) July, 1966 11

Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues,* 74 Yale L. J. 1245 (1965) 8

PAGE

Reich, *The New Property,* 73 Yale L. J. 733 (1964) 8, 16

Schorr, *How the Poor Are Housed,* p. 215 "Poverty in America," University of Michigan Press 13

Seavey, *Dismissal of Students: "Due Process,"* 70 Harv. L. Rev. 1406 (1957) 16

Symposium; Law of the Poor, 54 Calif. L. Rev. 319 (1966) 8

In the

Supreme Court of the United States

October Term, 1966

No. .....

Joyce C. Thorpe,

Petitioner,

—v.—

Housing Authority of the City of Durham.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina entered in the above case on May 25, 1966.

Opinions Below

The opinion of the Supreme Court of North Carolina is reported at 148 S. E. 2d 290 (1966) and is set forth in Appendix A, *infra*, pp. 1a-4a. The findings of fact and conclusions of law of the Superior Court of Durham County are unreported and are set forth in Appendix B, *infra*, pp. 5a-10a.

Jurisdiction

The judgment of the Supreme Court of North Carolina was entered on May 25, 1966. The time for filing this petition for writ of certiorari was extended by Mr. Justice

Brennan to and including October 21, 1966. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1257 (3), petitioner having asserted below and asserting here deprivation of rights secured by the Constitution and statutes of the United States.

Question Presented

Petitioner, a Negro, and her children have been tenants in a low-income housing project constructed with Federal funds and administered by an agency of the State of North Carolina pursuant to Federal regulations. The day after petitioner was elected as an official in a tenant's organization, the Housing Authority informed her that it was terminating her lease.

Was petitioner denied rights guaranteed by the due process clause of the Fourteenth Amendment and the First and Fifth Amendments of the Constitution of the United States by the public housing authority's refusal to accord her a hearing on the reasons for the eviction?

Constitutional and Statutory Provisions Involved

This petition involves the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

This petition also involves sections of the United States Housing Act, as amended, 42 U. S. C. §§1401 et seq. and portions of the North Carolina Housing Authorities Act, Chapter 157, General Statutes of North Carolina. These provisions are set forth in Appendix C, *infra*, pp. 11a-30a.

Statement

Since November 11, 1964, petitioner and her children have been tenants in McDougald Terrace, a public low-rent housing project owned and operated by the Housing Authority of the City of Durham, North Carolina, under authority of state law and pursuant to a contract with the Federal Government (R. 12).[1]

Under North Carolina law the Housing Authority is a "public body and a body corporate and politic, exercising public powers" (§157-9, Gen. Stat. of North Carolina) and has "all the powers necessary or convenient to carry out and effectuate the purposes and provisions" (*Ibid.*) of the North Carolina Housing Authorities Law (Chapter 157, Article 1, Gen. Stat. of North Carolina). The Authority also has power "to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city," and "to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project" (§157-9, Gen. Stat. of North Carolina) (R. 12).

Petitioner has occupied the project under a lease agreement (R. 18-25), whose initial term was from November 11 to November 30, 1964, and which provided that it would thereafter be automatically renewed for successive terms of one month each (R. 18). On August 10, 1965, petitioner was elected president of the Parents' Club, a group composed of tenants of the project (R. 13). The following day,

[1] Following the judgment of the trial court below they have continued to remain in the premises under stays of the eviction order pending appeal.

August 11, 1965, petitioner was notified that her lease would be cancelled effective August 31, 1965, at which time she would have to vacate the premises (R. 25). The Authority gave no reason for the eviction but merely cited the provision of the lease (R. 19) that permitted the landlord to cancel upon fifteen days notice (R. 25). Although petitioner requested a hearing to go into the reasons for her eviction, the request was denied (R. 5-6).

There was no provision in the lease which specifically either granted or denied the Authority the right to evict without cause and hearing. The lease did provide, however, that either party could terminate by giving written notice of such termination fifteen days prior to the last day of the term (R. 19). This provision was construed by the Authority to permit eviction without cause and without a hearing. The lease, prepared by the Housing Authority, further provided that the tenant could be evicted under certain circumstances, including: non-payment of rent (R. 20); exceeding limits on family size or income (R. 22-23); misrepresentations of material facts in the tenant's application (R. 23); and membership in "an organization designated by the Attorney General of the United States as subversive" (R. 24).

On September 18, 1965, the Housing Authority instituted an action of ejectment against petitioner and her three children. The Justice of the Peace Court in Durham Township, on September 20, 1965, ordered defendant and her children evicted from the project upon a showing that the notice of eviction was duly served (R. 8-11). Petitioner appealed to the Superior Court of Durham County where additional evidence was taken in the form of stipulated testimony (R. 11-14).

Petitioner alleged that the ground for her removal was her involvement with the tenants' organizing group (R. 15). The Authority denied this was the reason, but admitted refusing her a hearing prior to the institution of litigation. The Authority offered no proof concerning the reasons for the removal of petitioner and her children and did not explain why the notice to evict was sent out the day after petitioner was elected president of the tenants' group (R. 13-14). On the basis of the stipulations the Superior Court found that the reason for the eviction was not petitioner's activities with the organizing group. The Court went on to find that the Housing Authority had not given her a hearing or a reason for the eviction (R. 5-6),[2] and concluded as a matter of law that the Authority had no duty to give petitioner a hearing or to communicate its reason for terminating the lease; it affirmed the eviction.

Petitioner appealed to the Supreme Court of North Carolina, and on May 25, 1966, that Court affirmed the order to evict. The Supreme Court held that the Authority was under no obligation to conduct a hearing or advise the tenant of its reasons for terminating the lease, since its obligations to its tenants were the same as the obligations of a private landlord to its tenants. The Court cited as authority a 1913 North Carolina decision construing a lease in a suit brought by a private landlord against his tenant for loss of rents. A stay of the eviction order was granted by the Supreme Court of North Carolina pending action by this Court on a petition for writ of certiorari.

---

[2] The relevant stipulations were that the Housing Authority gave neither a hearing nor reason for the eviction (R. 12); that petitioner alleged that the reason for the eviction was her participation in the organization of the Parents' Club (R. 13); that the Director of the Housing Authority would testify that whatever the reason, if any, for the eviction it was not her activities in the tenants' group; and that the court could make findings of fact based on these stipulations and petitioner's affidavit (R. 13-14).

How the Federal Questions Were Raised and Decided Below

The question of whether the eviction without cause, explanation, or hearing, of petitioner and her children, tenants in a low-income housing project supported by federal funds and administered by the Authority pursuant to federal regulations, violated rights guaranteed to petitioner and her children by the Federal Constitution and statutes, was raised at the trials in the Justice of the Peace and Superior Courts by affidavit and motion to quash the eviction proceeding (R. 14-18).[2a]

Following the entry of judgment by the Superior Court, petitioner made exceptions to the court's judgment (R. 28-30), and gave notice of appeal (R. 31). Among the assignments of error argued to the North Carolina Supreme Court was the following:

> 4. For that the Court erred in finding as a matter of law that the Housing Authority of the City of Durham did not owe duty to communicate or give the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject. As shown by EXCEPTION #4. (R. 32.)

In its opinion, the Supreme Court held that, "It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease." 148 S. E. 2d 290, at 292 (App., p. 4a). In finding

---

[2a] The Motion to Quash stated, in part:

> That the tenant in a Public Housing Project has a *right* to her apartment and a deprivation of that right without a hearing violates due process of law as guaranteed by the 14th Amendment (R. 17).

that the Authority was entitled to bring summary ejection proceedings against petitioner without granting a hearing or stating its reasons for eviction, the Supreme Court of North Carolina necessarily rejected petitioner's federal claims.

REASONS FOR GRANTING THE WRIT

The Question of the Right of Tenants of Public Housing to a Fair Hearing on the Reasons for Eviction Is of National Importance.

Introductory

In recent years there has been a growing awareness of and concern for the legal rights of the poor and the availability of legal services necessary to preserve them. This interest has been stimulated by decisions of this Court,[3] and has been furthered by Federal legislation,[4] national conferences,[5] and, of course, the underlying economic and social factors. The initial focus of this interest was on the rights of criminally accused indigents. More recently, it

---

[3] *Brown* v. *Board of Education*, 347 U. S. 483; *Griffin* v. *Illinois*, 351 U. S. 12; and *Gideon* v. *Wainwright*, 372 U. S. 335.

[4] *E.g.*, The Economic Opportunity Act of 1964, 78 Stat. 508, and The Criminal Justice Act of 1964, 78 Stat. 552, 18 U. S. C. §3006A.

[5] *E.g.*, National Conference on Law and Poverty, Washington, D. C., June 23-25, 1965, under the Co-Sponsorship of the Attorney General and the Director of the Office of Economic Opportunity; The Extension of Legal Services to the Poor, Washington, D. C., November 12, 13, 14, 1964, under the Sponsorship of the U. S. Department of Health, Education and Welfare; National Conference on Bail and Criminal Justice, Washington, D. C., May 27-29, 1964 under the Co-Sponsorship of the U. S. Department of Justice and the Vera Foundation.

has shifted to encompass a variety of areas where legal institutions—whether by omission or commission—discriminate against the poor: landlord and tenant relationships, consumer fraud, the relation of the indigent to state administration of public benefits, especially welfare and public housing, family problems, and the absence of legal services for poor clients. See, e.g., *Symposium: Law of the Poor,* 54 Calif. L. Rev. 319-1014 (1966); Bibliography of Selected Readings in Law and Poverty, in Conference Proceedings, *National Conference on Law and Poverty* (1965); Conference Proceedings, *The Extension of Legal Services to the Poor* (1964); Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues,* 74 Yale L. J. 1245 (1965); *Poverty, Civil Liberties, and Civil Rights: A Symposium,* 41 New York U. L. Rev. 328 (1966). One result of this concern for the legal rights of the poor has been the establishment of programs by both public and private organizations to give substance and reality to those rights.[6]

Among the wide range of legal questions to which attention is being given, one of the most important is that of the right of indigent persons to public benefits. See Reich, *The New Property,* 73 Yale L. J. 733 (1964); Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues,* 74 Yale L. J. 1245 (1965); Handler, *Controlling Official Behavior in Welfare Administration,* 54 Calif. L. Rev.

[6] Thus, under the Economic Opportunity Act the Federal Government has begun to finance neighborhood legal offices devoted exclusively to providing free legal advice to the poor. Similar services are being provided by private organizations such as Mobilization for Youth in New York City, and the NAACP Legal Defense and Educational Fund, Inc. and the Center for Social Welfare Policy and Law of Columbia University on a nation-wide scale. At the same time, organizations of the poor themselves have arisen in various cities, *e.g.*, the West Side Organization in Chicago, and Rescuers from Poverty in Baltimore, Maryland.

479 (1966); Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 Calif. L. Rev. 567 (1966). One of the key issues in the right to public benefits is the one presented by the present case, *i.e.*, whether the recipients of such benefits can be denied or deprived of them arbitrarily, or whether they are entitled to procedural protections. See, *e.g.*, O'Neill, *Unconstitutional Conditions: Welfare Benefits with Strings Attached*, 54 Calif. L. Rev. 443, 474-478 (1966).

Thus, although this petition raises only a narrow question of what has been called social welfare or poverty law, that question is of substantial public importance since its resolution has ramifications affecting the rights of recipients to all forms of welfare benefits. Moreover, even viewing the case solely as affecting the rights of persons in public housing, the issue is of great importance. According to information supplied by the United States Department of Housing and Urban Development, there are approximately 1,400 local housing authorities with low-rent projects throughout the United States. These authorities have been advised by the United States Public Housing Authority to draw up their tenant leases on a month-to-month basis, and it is the opinion of the Department that the local authorities "perhaps without exception, have followed this recommendation." This practice does permit evictions to be accomplished after the giving of a notice to vacate which does not state the reason therefor."[7] Thus, the lease involved in

[7] This information was supplied in a letter from Mr. Don Hummel, Assistant Secretary for Renewal and Housing Assistance, Department of Housing and Urban Development, in response to an inquiry from one of the attorneys for petitioner. The partial text of the letter follows:

> Concerning item 2, local authorities consistently have been advised to draw their tenant leases on a month-to-month basis.

this case is substantially identical to that used by the hundreds of state and municipal housing authorities administering federally assisted low-income projects. See also, Friedman, *Public Housing and the Poor: An Overview*, 54 Calif. L. Rev. 642, 659-661 (1966).

Thousands of persons reside in these low-income projects, which generally provide the only decent housing available to them because of their poverty.[8] To the poor, therefore, the terms of occupancy in these projects transcend economic discrimination and involve basic notions of dignity and responsibility in a free society:

> The urban slum is one of the greatest social, political, economic, and moral problems facing the United States.

It is our opinion that authorities, perhaps without exception, have followed this recommendation. This practice does permit evictions to be accomplished after the giving of a notice to vacate which does not state the reason therefor. Local authorities recently, however, have been urged that, in a private conference, they should inform any tenants required to vacate of the reasons for such action.

Formerly there was a federal requirement (called the "Gwinn Amendment") intended to exclude from tenancy in a low-rent project any person who was a member of an organization designated as subversive by the Attorney General. This legislation expired approximately ten years ago. Any local authorities which might now have a non-communist or similar oath clause in their leases do so because of their own local policy or possibly requirements of state law or simply because they have neglected to delete from their lease forms obsolete provisions.

[8] The United States Housing Act of 1937 and the North Carolina Housing Authorities Act (see text and notes, *infra*), under which the Housing Authority herein has been established and financed, both make it clear that the expenditure of funds for publicly owned housing is required because of the inability of the private sector to provide decent, safe, and sanitary housing for low-income families. 42 U. S. C. §§1401, 1402; 1415(7) (App. pp. 11a, 12a, 18a-19a); §§157-2, 157-4, 157-9, Gen. Stat. of North Carolina (App. pp. 20a, 21a-22a, 24a).

> One major source of the problem is the lack of housing units for low-income families and the inadequacy of resources now devoted to building more. Another aggravating factor is the increasing separation of the urban slumdweller from place of work or shopping facilities which are moving out from the center of the city. But there are important problems of the slum that have little to do with the quality or location of construction. They concern rather the legal and social organization of slum living. The poor, whether in public or private housing do not share the same legal relations as the rest of the society. While the sanctity and importance of the home is basic to the American ideology and tradition, and important safeguards surrounding the home are written into the Constitution, the poor frequently have no rights of decision over where and under what conditions they live. On such basic questions as length of tenancy, repairs, privacy, admission or acceptance, it appears that there is one law for the middle class and another for the poor. Economic discrimination is reflected not only in geographical divisions, but in legal ones. *Property Rights and the Low-Income Tenant: Law as an Instrument of Social Reconstruction.* Institute for Policy Studies (mimeo) July, 1966.

Since no other decent housing is available, an unbridled power by housing authorities to evict without reason or hearing is punishment of the severest kind, particularly since some housing authorities have promulgated regulations preventing an individual from being considered as a tenant after he has once been evicted from a project. (See, *e.g.*, New York Housing Authority Regulations, 9N1287, §1a(7).)

Indeed, the existence and exercise of such a power is in conflict with the declared policy of the United States Housing Act of 1937 (42 U. S. C. §§1401 et seq.) under which the Housing Authority of Durham, and others throughout the country, was financed (R. 12).[9] The purpose of federally supported low-income housing is set forth in 42 U. S. C. §1401 (App. p. 11a):

> It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent,

[9] Section 157-9, Gen. Stat. of North Carolina, establishes the Housing Authority as a "public body and a body corporate and politic, exercising public powers" necessary to carry out the purposes of the North Carolina Housing Authorities Law (Appendix, pp. 24a, 25a). The Authority has power to manage any housing project owned by the city and, "to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof." (§157-9, Gen. Stat. of North Carolina, App., p. 25a.) Having received Federal financial support and operating pursuant to its contract with the Federal Government (R. 12), the Authority must adopt and promulgate regulations for internal management (such as lease provisions) that are consistent with and reasonably related to the purposes of low-income housing (42 U. S. C. §§1401, 1410 (g) (2) (App., pp. 11a, 17a); Public Housing Administration, Consolidated Annual Contributions Contract, Part I, Sec. 206, Admission Policies, PHA 3010, p. 8 (1964)). The Federal Act further provides that the Federal Public Housing Administration distributing the funds is authorized to lend all municipal Housing Authorities an amount not in excess of 90 percent of the final development cost of the project and also to make annual contributions over a period of years. Congress then appropriates funds to implement the contracts made by the federal agency and the tenants of the project are selected by the municipal authority subject to the loan or subsidy contract with the government. (42 U. S. C. §§1409, 1410 and 1411.)

> safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. * * * It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies.

Certainly, the absolute power conferred on the respondent Authority by the court below to evict without a hearing, and hence for no reason or at the unbridled whim of housing officials, runs directly contrary to the purposes of insuring low-income citizens a decent place to live and of promoting stability and security in the poor families the Act is intended to benefit. *Cf.*, 42 U. S. C. §1402, App., p. 12a. (See, Schorr, *How the Poor Are Housed*, p. 215, "Poverty in America," University of Michigan Press.)

For these reasons, the question presented by this case is no less than whether thousands of persons are able to live at a minimum level of comfort and decency without being denied this right by arbitrary and unexplained actions of public agencies. In addition, the broader question is involved of the right of persons receiving any public welfare benefits to at least a bare minimum of procedural protection before the very necessities for life are taken from them.

Conflict Between the Decisions of This Court and the Judgment Below as to the Right to a Hearing Necessitates Resolution of the Issue by This Court.

The decisions of this Court make it clear that the federal and state governments may not act arbitrarily to deny persons benefits. One obligation imposed upon government is that before it takes adverse action against persons it must conform to certain requirements of due process, the most basic of which is a hearing. In his concurring opinion in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, at 171, Mr. Justice Frankfurter described why the due process clause requires a hearing before valuable rights are denied:

> Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights . . . That a conclusion satisfies one's private conscience does not attest its reliability . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness.

In cases involving federal employment, even when national security has been involved, this Court has held that administrative action which denies governmental benefits would be approved only when an opportunity to influence the fact-finder and to explain adverse charges is accorded. *Greene* v. *McElroy*, 360 U. S. 474. And, in *Slochower* v. *Board of Education*, 350 U. S. 551, the Court reversed a state administrative determination on Fourteenth Amendment grounds. Although the case is often considered with respect to the assertion of the privilege against self-incrimination, the Court held that summary dismissal with-

out any inquiry when the privilege was claimed was a denial of due process:

> This is not to say that Slochower has a constitutional right to be an associate professor of German at Brooklyn College. The State has broad powers in the selection and discharge of its employees, and it may be that proper inquiry would show Slochower's continued employment to be inconsistent with a real interest of the State. But there has been no such inquiry here. We hold that the summary dismissal of appellant violates due process of law. (350 U. S. at 559.)[10]

See also, *Schware* v. *Board of Bar Examiners*, 353 U. S. 232. In closely analogous cases, involving the expulsion of students from state colleges or high schools, lower federal courts have applied the above principles and required notice and a hearing. *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961), *cert. denied*, 368 U. S. 930; *Woods* v. *Wright*, 334 F. 2d 369 (5th Cir. 1964); *Knight* v. *State Board of Education*, 200 F. Supp. 174

[10] Cf., *Interstate Commerce Commission* v. *Louisville and N. R. Co.*, 227 U. S. 88, 91. This Court, replying to the claim that a Commission's order made without substantial supporting evidence was conclusive, declared:

> . . . A finding without evidence is arbitrary and baseless. And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

See also *Southern Railroad Co.* v. *Virginia ex rel. Shirley*, 290 U. S. 190.

(M. D. Tenn. 1961). See also cases collected in Reich, *The New Property,* 73 Yale L. J. 733, 783-84 (1964), and Seavey, *Dismissal of Students: "Due Process,"* 70 Harv. L. Rev. 1406 (1957).[11]

The court below apparently based its holding on the concept that the Housing Authority of the City of Durham has the same status as any private landlord. This position, however, is untenable, since it is clear that government is not immunized from constitutional requirements because it occupies the relationship of landlord. See, *Burton* v. *Wilmington Parking Authority,* 365 U. S. 715; *Smith* v. *Holiday Inns of America,* 336 F. 2d 630 (6th Cir. 1964). As the Court of Appeals for the District of Columbia has said:

> The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process. *Rudder* v. *United States,* 226 F. 2d 51, 53 (D. C. Cir. 1955).

Thus, for example, a public housing authority could not discriminate on the basis of race. *Detroit Housing Commission* v. *Lewis,* 226 F. 2d 180 (6th Cir. 1955). Nor, it seems, should it be differentiated from government acting in other capacities. It apparently could not bar occupancy

---

[11] Similarly, although the due process clause does not require that an alien never admitted to this country be granted a hearing before being excluded, *United States ex rel. Knauff* v. *Shaughnessy,* 338 U. S. 537, 542, once an alien has been admitted to lawful residence in the United States and remains physically present here, it has been held that "although Congress may prescribe conditions for his expulsion and deportation, not even Congress may expel him without allowing him a fair opportunity to be heard." *Kwong Hai Chew* v. *Colding,* 344 U. S. 590, 597-98.

for failure to take an oath that was unconstitutionally vague, *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 288, or that barred membership in certain organizations, *Wieman* v. *Updegraff*, 344 U. S. 183, 192. Government has been disabled from imposing a religious oath, *Torcaso* v. *Watkins*, 367 U. S. 488; it has been forbidden to condition the affording of benefits on performing acts that violate one's religious principles, *Sherbert* v. *Verner*, 374 U. S. 398; it has been prohibited from requiring a citizen to reveal all organizational affiliations, *Shelton* v. *Tucker*, 364 U. S. 479.[12] Yet, having been denied a hearing, petitioner cannot tell whether she was evicted for reasons that violate the holding of those cases.

The denial of the right to a hearing is even more abhorrent when, as in this case, it raises questions of suppression of the right to speak and associate. Cf. *Shelton* v. *Tucker*, *supra*. On the face of it, petitioner's expulsion following her election as president of a tenants' association warranted exploration at a hearing on whether she was expelled for that reason. Moreover, a provision in

---

[12] Nor can the State successfully maintain the position that although the petitioner may have had a right to a hearing, she waived that right by signing a lease with the provision involved herein (R. 19). To require that petitioner insist that her lease specifically contain a provision prohibiting her eviction without hearing or cause if she wishes to retain her constitutional rights is to nullify those rights themselves, especially where the State, as landlord, has all of the bargaining power and the low-income individual, as tenant, has none. A State may not exact the surrender of federal constitutional rights as a price for the opportunity of living in a public housing project or as an exchange for any benefit it has to offer. See *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150, 156 (5th Cir. 1961), in which the Fifth Circuit held that a state college could not require that students renounce the right to due process upon expulsion as a condition to admittance; see also, *Shelton* v. *Tucker*, 364 U. S. 479; *Frost Trucking Co.* v. *R. R. Com.*, 271 U. S. 583.

the lease barring tenants who belong to "subversive organizations" is patently unconstitutional.[13] See, *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123. There is no way of knowing, without a hearing, whether false evidence was considered against this petitioner to the effect that she belonged to such an organization and that she was evicted for such a reason. She has no knowledge of why she was evicted and has had no opportunity to defend against such a false charge, if indeed it was made. This contention is not entirely speculative for it is not uncommon to charge subversive conduct to persons engaged in protest movements of a totally legal and constitutional nature.

Against the foregoing reasons for requiring an adequate hearing and notice of reasons before eviction, the State has proposed no countervailing interest. Certainly, a public housing authority may make regulations reasonably related to the proper management of the projects under its control. However, the rationality of such regulations must be determined in relation to the purposes of the governmental activity involved.

An additional reason for review of the judgment of the court below exists in that a number of state and federal appellate courts have rendered conflicting decisions on the question raised herein. Thus, in addition to the Supreme Court of North Carolina in the present case, the Seventh Circuit and courts in Arizona and Pennsylvania have held

---

[13] It should be noted that the ostensible federal statutory authority for this lease provision, the so-called "Gwinn Amendment" (67 Stat. 307, 42 U. S. C. §1411c), expired more than ten years ago. The continued inclusion of a prohibition against members of such organizations raises serious questions as to the validity of the entire lease.

that a governmental agency operating a housing project may act like a private landlord and evict summarily under the terms of a lease.[14] On the other hand, the District of Columbia Circuit, together with courts in New Jersey, California, Wisconsin, and Illinois, have held that even when acting as a landlord the government still must follow due process and hence cannot act arbitrarily.[15] Because of the seriousness and importance of the question presented, it is imperative that this Court review the decision below and resolve these conflicting decisions.

---

[14] *Brand* v. *Chicago Housing Authority*, 120 F. 2d 786 (7th Cir. 1941); *Walton* v. *City of Phoenix*, 69 Ariz. 26, 208 P. 2d 309 (1949); *Housing Authority of City of Pittsburgh* v. *Turner*, 201 Pa. Super. 62, 191 A. 2d 869 (Superior Ct. Pa. 1963).

[15] *Rudder* v. *United States*, 226 F. 2d 51 (D. C. Cir. 1955); *Kutcher* v. *Housing Authority of Newark*, 20 N. J. 181, 119 A. 2d 1 (1955); *Housing Authority of Los Angeles* v. *Cordova*, 130 Cal. App. 2d 883, 279 P. 2d 215 (App. Dept., Superior Ct. 1955); *Lawson* v. *Housing Authority of City of Milwaukee*, 270 Wisc. 269, 70 N. W. 2d 605 (1955), *cert. denied*, 350 U. S. 882 (1955); *Chicago Housing Authority* v. *Blackman*, 4 Ill. 2d 319, 122 N. E. 2d 522 (1954). More recently, a district court has enjoined an eviction on a finding that its reason was the activities of the tenant in a tenant's organization. *Holt* v. *Richmond Redevelopment and Housing Authority* (E. D. Va., C. A. No. 4746, Sept. 7, 1966). And in *Williams* v. *City of Ypsilanti* (D. Mich., C. A. No. 28936), a district court has issued a temporary restraining order barring a Michigan housing authority from evicting the plaintiff under a lease provision allowing termination if a woman who is the head of a household has an additional child.

CONCLUSION

For the above reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
MICHAEL MELTSNER
CHARLES H. JONES, JR.
SHEILA RUSH JONES
10 Columbus Circle
New York, New York

M. C. BURT
213½ West Main Street
Durham, North Carolina
Attorneys for Petitioner

Of Counsel:

EDWARD V. SPARER
MARTIN GARBUS
HOWARD THORKELSON

APPENDIX I

Judgment of the Supreme Court of North Carolina

NORTH CAROLINA SUPREME COURT

SPRING TERM 1966

No. 769—Durham

HOUSING AUTHORITY OF THE CITY OF DURHAM,

—v.—

JOYCE C. THORPE.

Appeal by defendant from Bickett, J., October 1965 Civil Session of Durham.

The plaintiff instituted summary ejectment proceedings before H. L. Townsend, Justice of the Peace, to remove the defendant from Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, in the city of Durham. From a judgment in favor of the plaintiff in the Court of the Justice of the Peace, the defendant appealed to the superior court where the matter was heard *de novo* by the court without a jury. The court made findings of fact, each of which is supported by stipulations or by the evidence in the record. The material facts so found may be summarized as follows:

The plaintiff, a corporation organized and operating under the laws of the State of North Carolina, is the owner of the tract of land known as the McDougald Terrace Housing Project in the city of Durham, which includes Apartment No. 38-G Ridgeway Avenue. On 11 November 1964

the plaintiff and the defendant entered into a lease contract whereby the plaintiff leased to the defendant the said apartment for a term beginning 11 November 1964 and terminating at midnight 30 November 1964. The lease provided that it would be automatically renewed for successive terms of one month each. It further provided that the lease could be terminated by either party by giving to the other written notice of such termination 15 days prior to the last day of the term. There was no provision in the lease requiring the lessor to give to the lessee any reason for its decision to terminate the lease or requiring that any hearing be held by the plaintiff, or by any other person or agency, with respect to such decision.

The defendant occupied the apartment pursuant to the lease. On 12 August 1965 the plaintiff gave, and the defendant received, a written notice that the lease was cancelled effective 31 August 1965 and that at such time the plaintiff would be required to vacate the premises. The plaintiff gave no reason to the defendant for its decision to terminate the lease, advising the defendant that it was not required to do so. The defendant requested a hearing but the plaintiff did not conduct any hearing at which the defendant was present. Whatever may have been the plaintiff's reason for terminating the lease, it was neither that the defendant had engaged in efforts to organize the tenants of McDougald Terrace nor that she was elected president of a group which was organized in McDougald Terrace on 10 August 1965. The defendant refused to vacate the premises.

Upon these findings, the court concluded that the plaintiff terminated the lease as of 31 August 1965; that the occupancy of the premises by the defendant after such

date was wrongful and in violation of the plaintiff's right to possession; that there was no duty upon the plaintiff to give to the defendant any reason for its termination of the lease or to hold any hearing upon the matter; and that the plaintiff was entitled to the possession of the premises and the defendant was in wrongful possession thereof.

The court, therefore, gave judgment that the defendant be removed from the premises, that the plaintiff be put in possession thereof and that the plaintiff have and recover from the defendant $58.00 plus a reasonable rent for the premises from and after 1 November 1965 until the same are vacated, together with the costs of the action. From this judgment the defendant appeals.

M. C. Burt, R. Michael Frank, Jack Greenberg, Sheila Rush, Edward V. Sparer of Counsel for defendant appellant.

Daniel K. Edwards for plaintiff appellee.

Per Curiam. The plaintiff is the owner of the apartment in question. The defendant has no right to occupy it except insofar as such right is conferred upon her by the written lease which she and the plaintiff signed. This lease was terminated in accordance with its express provisions at midnight 31 August 1965. With its termination, all right of the defendant to occupy the plaintiff's property ceased. Since that date the defendant has been and is a trespasser upon the plaintiff's land.

The defendant having gone into possession as tenant of the plaintiff, and having held over without the right to do so after the termination of her tenancy, the plaintiff was entitled to bring summary ejectment proceedings against her to restore the plaintiff to the possession of that which

belongs to it. G.S. 42-26; Murrill v. Palmer, 164 NC 50, 80 SE 55. It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease.

Having continued to occupy the property of the plaintiff without right after 31 August 1965, the defendant, by reason of her continuing trespass, is liable to the plaintiff for damages due to her wrongful retention of its property and for the costs of the action. G.S. 42-32; McGuinn v. McLain, 225 NC 750, 36 SE 2d 377; Lee, North Carolina Law of Landlord and Tenant, § 18.

No Error.

Moore, J., not sitting.

APPENDIX II

Judgment of the Superior Court of Durham County

This cause, coming on to be heard, and being heard before the undersigned, Honorable William Y. Bickett, Judge Presiding at the October Civil Term of Durham County Superior Court, upon plaintiff and defendant having expressly waived trial by jury, and having stipulated and agreed in open Court that this matter be heard without a jury by the Judge, and that the Judge find the facts upon stipulations made and affidavit filed, and render thereon conclusions of law and judgment in the cause; and the Court, after hearing argument of counsel and considering and weighing the stipulations made in this action and the affidavit filed therein, finds facts as follows:

(1) That the Housing Authority of the City of Durham is and was during all of the times involved in this action, and specifically on the 11th of November, 1964, and thereafter to the present date, a corporation organized and operating under and by virtue of the laws of the State of North Carolina—specifically, the Statute known and designated as the Housing Authorities Law of the State of North Carolina;

(2) That during said times, C. S. Oldham was the Executive Director of said Housing Authority of the City of Durham and charged with responsibility for management of the properties of the Housing Authority of the City of Durham located in the City of Durham;

(3) That on the 11th day of November, 1964, and thereafter, continuously until this date, the Housing Authority of the City of Durham was and is the owner of real property known as the McDougald Terrace Housing Project, located in the City of Durham, and specifically a dwelling apartment located in said housing project, designated and known as No. 38-G Ridgeway Avenue;

(4) That on the 11th day of November, 1964, the plaintiff and the defendant entered into and duly executed a lease contract, wherein the Housing Authority of the City of Durham leased to the defendant Apartment No. 38-G Ridgeway Avenue in said McDougald Terrace Project for the term beginning November 11, 1964, and terminating at Midnight November 30, 1964, at a rental of $19.33 for said term, payable in advance on the first day of said term; that said lease contract further provided that the rental for these premises would be based on the current family composition and family income as were represented to the management of the Housing Authority of the City of Durham, and would be in conformance with the approved current rent schedule which had been adopted by the Housing Authority of the City of Durham for the operation of the project; that the lease further provided that the lease would be automatically renewed for successive terms of one month each at a rental of $29.00 a month, provided there was no change in the income or composition of the family and no violation of the terms of the lease; that the lease further provided that the rent should be payable in advance on the first day of each calendar month, and that the lease could be terminated by the tenant by giving to the Housing Authority of the City of Durham notice in writing of such termination fifteen (15) days prior to the last day of the

term, and that management could terminate the lease by giving to the tenant notice in writing of such termination fifteen (15) days prior to the last day of the term; that there was no provision in said lease whereby it was agreed that the Housing Authority of the City of Durham would give the defendant any reason for termination of said lease or that any reason for the termination of said lease was required, and there was no provision in said lease that any hearing should be held by the Housing Authority or any other agency or person with respect to any decision by the Housing Authority of the City of Durham to terminate said lease and to give the defendant notice in writing of such termination, as was provided in the language of the lease;

(5) That the defendant, upon her execution of said lease, entered into and occupied said Apartment No. 38-G Ridgeway Avenue of the McDougald Terrace Project, owned by the Plaintiff, Housing Authority of the City of Durham and does now continue to occupy said dwelling apartment;

(6) That on the 12th day of August, 1965, the plaintiff, Housing Authority of the City of Durham, gave to the defendant, Joyce C. Thorpe, notice in writing as follows: "Your Dwelling Lease provides that the Lease may be cancelled upon fifteen (15) days' written notice. This is to notify you that your Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy"; and that the defendant duly received said notice to vacate on said date;

(7) That the defendant failed and refused to vacate said premises and continues to occupy same;

(8) That the Housing Authority of the City of Durham duly brought an action in summary ejectment before the Justice of the Peace Court in Durham County, and after hearing before said Court judgment was duly entered, requiring the defendant Joyce C. Thorpe to vacate said premises and ordering any duly constituted officer of Durham County to remove the defendant from said premises;

(9) That the defendant gave notice of appeal to the Superior Court and posted bond, pursuant to the provisions of G. S. 42-34;

(10) That the plaintiff Housing Authority of the City of Durham, acting through C. S. Oldham, its Manager and Executive Director, gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected President of a group organized in McDougald Terrace on August 10, 1965; that these were not the reasons said notice was given and eviction undertaken;

(11) That the plaintiff Housing Authority of the City of Durham gave no reason to the defendant for giving her notice that the lease was being terminated at the end of the term, nor did the plaintiff or any of its agents or employees conduct a hearing at which the defendant was present or invited to be present to inquire into reasons for terminating her lease;

(12) That the defendant did request a hearing on this matter but had no hearing other than that before the Justice of the Peace in this eviction action and in this Court;

(13) That the plaintiff, through its agents and employees, did inform the defendant that the plaintiff was not required to give or assign reasons to the defendant for the termination of her lease, and has not given to her or communicated to her any reason for so doing, other than that they desired to terminate her lease;

WHEREFORE, the Court concludes, as a matter of law, as follows:

(1) That the defendant, during August of 1965, occupied the premises owned by the plaintiff Housing Authority of the City of Durham, known and designated as Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, under and pursuant to the terms and provisions of a lease, whereby she was tenant from month to month;

(2) That by giving the defendant written notice of termination of her lease on the 12th day of August, 1965, the plaintiff effectively terminated the tenancy of the lease of the defendant as of the 31st day of August, 1965;

(3) That the continued occupancy of said premises by the defendant after the 31st day of August, 1965, was without right and was wrongful and against the express direction of the owner of said premises to vacate and in violation of said owner's right to possession of said premises;

(4) That the Housing Authority of the City of Durham did not owe a duty to communicate or give to the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject;

(5) That the Housing Authority of the City of Durham acted in conformity with and in accordance with the terms and provisions of the lease entered into with the defendant, and the provisions of the laws of the State of North Carolina, in terminating her lease;

(6) That the plaintiff is entitled to the possession of the premises described hereinabove, and that the defendant is in the wrongful possession thereof;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the defendant be removed from the said premises known as Apartment No. 38-G Ridgeway Avenue, and the plaintiff put in possession thereof, and that the plaintiff have and recover from the defendant the sum of Fifty-eight and No/100 ($58.00) Dollars, and a further amount, if any, as reasonable rent for said premises from the 1st day of November, 1965, until the premises are vacated by the defendant, and the defendant shall pay the costs to be taxed by the Clerk.

This 26th day of October, 1965.

WILLIAM Y. BICKETT
Judge Presiding.

APPENDIX III

Federal and State Public Housing Statutes

SELECTED PROVISIONS OF THE UNITED STATES HOUSING ACT OF 1937

42 U.S.C. § 1401 et seq.

§ 1401. *Declaration of policy*

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies.

§ 1402. *Definitions*

When used in this chapter—

Low-rent housing; eligibility; continued occupancy

(1) The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing shall be available solely for families of low income. Except as otherwise provided in section 1421b of this title, income limits for occupancy and rents shall be fixed by the public housing agency and approved by the Administration after taking into consideration (A) the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and (B) the economic factors which affect the financial stability and solvency of the project.

(2) The term "families of low income" means families (including elderly and displaced families) who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term "families" includes families consisting of a single person in the case of elderly families and displaced families, and includes the remaining member of a tenant family. The term "elderly families" means families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old-age benefit under title II of the Social Security Act, or are under a disability as defined in section 423 of this Title, or are handicapped within the

meaning of section 1701q of Title 12. The term "displaced families" means families displaced by urban renewal or other governmental action, or families whose present or former dwellings are situated in areas determined by the Small Business Administration, subsequent to April 1, 1965, to have been affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster.

Slum

(3) The term "slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

Slum clearance

(4) The term "slum clearance" means the demolition and removal of buildings from any slum area.

Development; office space for renewal functions

(5) The term "development" means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-rent housing project. The term "development cost" shall comprise the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges, but not beyond the point of physical completion), and in otherwise carrying out the development of such project. Construction activity in connection with a low-rent housing project may be confined to the reconstruction, remodeling, or repair of existing buildings. In cases where the public housing agency is also

the local public agency for the purposes of sections 1450–1452, 1453–1455, 1456–1460, and 1462 of this title, or in cases where the public housing agency and the local public agency for purposes of such sections operate under a combined central administrative office staff, an administration building included in a low-rent housing project to provide central administrative office facilities may also include sufficient facilities for the administration of the functions of such local public agency, and in such case, the Administration shall require that an economic rent shall be charged for the facilities in such building which are used for the administration of the functions of sueh local public agency and shall be paid from funds derived from sources other than the low-rent housing projects of such public housing agency.

Administration

(6) The term "administration" means any or all undertakings necessary for management, operation, maintenance, or financing, in connection with a low-rent-housing or slum-clearance project, subsequent to physical completion.

Federal project

(7) The term "Federal project" means any project owned or administered by the Administration.

Acquisition cost

(8) The term "acquisition cost" means the amount prudently required to be expended by a public housing agency in acquiring a low-rent-housing or slum-clearance project.

Non-dwelling facilities

(9) The term "non-dwelling facilities" shall include site development, improvements and facilities located outside building walls (including streets, sidewalks, and sanitary, utility, and other facilities).

Going Federal rate

(10) The term "going Federal rate" means the annual rate of interest (or, if there shall be two or more such rates of interest, the highest thereof) specified in the most recently issued bonds of the Federal Government having a maturity of ten years or more, determined, in the case of loans or annual contributions, respectively, at the date of Presidential approval of the contract pursuant to which such loans or contributions are made: *Provided,* That with respect to any loans or annual contributions made pursuant to a contract approved by the President after the first annual rate has been specified as provided in this proviso, the term "going Federal rate" means the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the six-month period (beginning with the six-month period ending December 31, 1953) during which the contract is approved by the President, which applicable rate for each six-month period shall be determined by the Secretary of the Treasury by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such six-month period, on all outstanding marketable obligations of the United States having a maturity date of fifteen or more years from the first day of such month of May or November, and by adjusting such esti-

mated average annual yield to the nearest one-eighth of one per centum: *And provided further,* That for the purposes of this chapter, the going Federal rate shall be deemed to be not less than 2½ per centum.

Public housing agency

(11) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (excluding the Administration), which is authorized to engage in the development or administration of low-rent housing or slum clearance. The Administration shall enter into contracts for financial assistance with a State or State agency where such State or State agency makes application for such assistance for an eligible project which, under the applicable laws of the State, is to be developed and administered by such State or State agency.

State

(12) The term "State" includes the States of the Union, the District of Columbia, and the Territories, dependencies, and possessions of the United States.

Public Housing Administration

(13) The term "Administration" means the Public Housing Administration.

Initiated

(14) The term "initiated" when used in reference to the date on which a project was initiated refers to the date of the first contract for financial assistance in respect to such project entered into by the Administration and the public housing agency.

§ 1410. *Annual contributions in assistance of low rentals—Authorization*

* * * * *

Maximum income limits; admission policies

(g) Every contract for annual contributions for any low-rent housing project shall provide that—

(1) the maximum income limits fixed by the public housing agency shall be subject to the prior approval of the Administration and the Administration may require the agency to review and revise such limits if the Administration determines that changed conditions in the locality make such revisions necessary in achieving the purposes of the chapter;

(2) the public housing agency shall adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of displaced families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran, and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income: *Provided,* That in establishing such admission policies the public housing agency shall accord to families of low income such priority over single persons as it determines to be necessary to avoid undue hardship; and

(3) the public housing agency shall determine, and so certify to the Administration, that each family in the project was admitted in accordance with duly adopted regulations and approved income limits; and

the public housing agency shall make periodic reexaminations of the incomes of families living in the project and shall require any family whose income has increased beyond the approved maximum income limits for continued occupancy to move from the project unless the public housing agency determines that, due to special circumstances, the family is unable to find decent, safe and sanitary housing within its financial reach although making every reasonable effort to do so, in which event such family may be permitted to remain for the duration of such a situation if it pays an increased rent consistent with such family's increased income.

• • • • •

§ 1415. *Preservation of low rents*

• • • • •

Local responsibilities and determinations

(7) In recognition that there should be local determination of the need for low-rent housing to meet needs not being adequately met by private enterprise—

(a) The Administration shall not make any contract with a public housing agency for preliminary loans (all of which shall be repaid out of any moneys which become available to such agency for the development of the projects involved) for surveys and planning in respect to any low-rent housing projects initiated after March 1, 1949, (i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loan; and (ii) unless the public housing

agency has demonstrated to the satisfaction of the Administration that there is a need for such low-rent housing which is not being met by private enterprise; and

(b) The Administration shall not make any contract for loans (other than preliminary loans) or for annual contributions pursuant to this chapter with respect to any low-rent housing project initiated after March 1, 1949, (i) unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Administration pursuant to this chapter; (ii) unless the public housing agency has demonstrated to the satisfaction of the Administration that a gap of at least 20 per centum (except in the case of a displaced family or an elderly family) has been left between the upper rental limits for admission to the proposed low-rent housing and the lowest rents at which private enterprise unaided by public subsidy is providing (through new construction and available existing structures) a substantial supply of decent, safe, and sanitary housing toward meeting the need of an adequate volume thereof; and (iii) unless the public housing agency has demonstrated to the satisfaction of the Administration that there is a feasible method for the temporary relocation of the individuals and families displaced from the project site, and that there are or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of such individuals and families, decent, safe, and sanitary dwellings equal in number to the number of and avail-

able to such individuals and families and reasonably accessible to their places of employment.

* * * * *

NORTH CAROLINA HOUSING AUTHORITIES LAW

§ 157-1 et seq., Gen. Stat. of North Carolina

§ 157-2. *Finding and declaration of necessity.*—It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the State and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest

that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest.

§ 157-4. *Notice, hearing and creation of authority; cancellation of certificate of incorporation.*—Any twenty-five residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;

(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article;

(3) The term of office of each of the commissioners;

(4) The name which is proposed for the corporation; and

(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no indebtedness has been incurred or property acquired by said housing authority.

§ 157-9. *Powers of authority.*—An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons

of low income, and to co-operate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing project and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the

lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their

control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, to take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through

or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

§ 157-29. *Rentals and tenant selection.*—It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or

as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient

(1) To pay, as the same become due, the principal and interest on the bonds of the authority;

(2) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and

(3) To create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve.

In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding;

(2) It may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons;

(3) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and

(4) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section.

INDEX

	Page
Question Presented	1
Statement	2
Reasons for Denying the Writ	
I. There Is No Conflict Between the Decisions of This Court and the Judgment Below	3
II. There Is No Significant Conflict Among the Decisions of Lower Courts Upon the Issue Raised Here	8
III. This Case on Its Facts Is Not of Sufficient National Importance To Require Review by This Court	12
Conclusion	13
Appendix	1a

Table of Cases

Beilan v. Board of Education, 357 U.S. 399 (1958)	4
Brand v. Chicago Housing Authority, (CCA 7), 120 F. 2d 786 (1941)	8, 9
Cafeteria and Rest Workers Union v. McElroy, 367 U.S. 886 (1961)	4, 5
Chicago Housing Authority v. Blackman, 4 Ill. 2d 319, 122 N.E. 2d 522 (1954)	9
Chicago Housing Authority v. Ivory, 341 Ill. App. 282, 93 N.E. 2d 386 (1950)	8
Columbus Metropolitan Housing Authority v. Simpson, 85 Ohio App. 73, 85 N.E. 2d 560 (1959)	8
Cramp v. Board of Public Instruction, 368 U.S. 278 (1961)	4
Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930	11
Greene v. McElroy, 360 U.S. 474 (1959)	4

Page

Holt v. Richmond Housing Authority, (E.D. Va. C.A. No. 4746 (1966) 10
Housing Authority of Los Angeles v. Cordova, 130 Cal. App. 2d Supp. 883, 279 P. 2d 215 (1955) 9
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951) 5
Knight v. State Board of Education, 200 F. Supp. 174, (M.D. Tenn. 1961) 11
Kutcher v. Housing Authority of Newark, 20 N.J. 181, 119 A. 2d 1, (1955) 10
Lawson v. Housing Authority of Milwaukee, 270 Wisc. 269, 70 N.W. 2d 605 (1955) 9
Pittsburgh Housing Authority v. Turner, 201 Pa. Super. 62, 191 A. 2d 869 (1963) 8
Rudder v. United States, 226 F. 2d 51 (D.C. Cir. 1955) 10
Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) 4, 5
Shelton v. Tucker, 364 U.S. 479 (1960) 4
Sherbert v. Verner, 37 U.S. 398 6
Slochower v. Board of Education, 350 U.S. 551 (1956) 4
Steier v. New York State Education Commissioner, (CCA 2d) 271 F. 2d 13 (1959) 11
Torcaso v. Watkins, 367 U.S. 488 (1961) 4
Walton v. City of Phoenix, 69 Ariz. 26, 208 P. 2d 309 (1949) 8
Wieman v. Updegraff, 344 U.S. 183 (1952) 4
Woods v. Wright, 334 F. 2d 369 (5th Cir. 1964) 11

STATE STATUTES AND REGULATIONS

§ 1-568.10, General Statutes of North Carolina 8
§ 1-568.11, General Statutes of North Carolina 8
§ 42-26, General Statutes of North Carolina 7
§ 42-31, General Statutes of North Carolina 7
§ 42-34, General Statutes of North Carolina 7
§ 157-9, General Statutes of North Carolina 6
§ 157-29, General Statutes of North Carolina 7

FEDERAL STATUTES AND REGULATIONS

United States Housing Act of 1937 .....8, 10

Federal Acts on National Housing, Title 50 U.S.C.A. War Appendix 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No.

JOYCE C. THORPE, *Petitioner,*

v.

HOUSING AUTHORITY OF THE CITY OF DURHAM.

BRIEF OF THE HOUSING AUTHORITY OF THE CITY OF DURHAM IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

QUESTION PRESENTED

Did the Supreme Court of North Carolina decide a Federal question of substance in a way probably not in accord with applicable decisions of the Supreme Court of the United States in holding that a local Housing Authority could successfully maintain an action in ejectment in the State Courts by showing it had complied with the terms of its lease and the general law of this State applicable to landlord and tenant, in the absence of any finding that the tenant was discriminated against or evicted for any unlawful reason?

STATEMENT

The Petitioner and the Housing Authority of the City of Durham, on the 11th day of November 1964, entered into a written lease, leasing to the Petitioner, Thorpe, an apartment in a building owned by the Housing Authority of the City of Durham for a term beginning November 11, 1964, and terminating at midnight November 30, 1964 (R. 18). The lease provided that it would automatically be renewed for successive terms of one month each and that the Housing Authority could prevent such automatic renewal by giving to the tenant notice, in writing, of such intention fifteen days prior to the last day of the term, and that the tenant could prevent the automatic renewal by giving a like notice to the Housing Authority. There was no provision in the lease requiring a reason to be assigned for a decision not to renew the lease by either party. On the 12th day of August 1965, the Housing Authority gave written notice to the Petitioner that the lease would not be renewed after the term ending August 31, 1965, (R. 4). After the term ended on August 31, 1965, the Petitioner, Thorpe, refused to vacate the premises and continued to occupy same (R. 5).

The Housing Authority brought an action in Summary Ejectment before a Justice of the Peace in Durham County (R. 5); and after a hearing before the Justice of the Peace, participated in by the Petitioner, Thorpe, and her counsel, Judgment was entered by the Court requiring the defendant, Thorpe, to vacate the premises. The Petitioner then gave notice of appeal to the Superior Court of North Carolina (R. 5).

Upon the case coming on for hearing in the Superior Court of Durham County, North Carolina, both parties waived trial by jury and stipulated that the Judge

presiding should find the facts upon the stipulations made and affidavits filed and render thereon judgment (R. 2). In her affidavit filed in this action, the Petitioner, Thorpe, asserted that the reason for her eviction was her efforts to organize the tenants of McDougald Terrace, the housing project belonging to the Housing Authority (R. 15). It was stipulated by both parties that it was alleged by the Petitioner, Thorpe, that the reason she was being evicted was due to her participation in the organization of the Parent's Club in the McDougald Terrace Project (R. 13).

The Superior Court then found as fact that the Housing Authority was the owner of the property occupied by the Petitioner, Thorpe; that the lease was duly executed; that the Petitioner, Thorpe, duly received a written notice from the Housing Authority terminating a lease effective August 31, 1965; that the Petitioner, Thorpe, failed to vacate the premises after the 31st day of August, 1965; and that the organizational activity of the Petitioner was not the reason for giving her notice that the lease would not be renewed (R. 2-7).

The Petitioner then appealed to the Supreme Court of North Carolina, and there the judgment of the Superior Court was affirmed.

REASONS FOR DENYING THE WRIT

I.

There Is No Conflict Between the Decisions of This Court and the Judgment Below.

No decision of this Court has been found which is squarely in point. In numerous cases, this Court has protected the constitutional rights of an individual when his job was placed in jeopardy by an unconstitutional requirement of a Governmental Agency. Of these

cases the Petitioner cites *Greene* v. *McElroy*, 360 U.S. 474 (1959); *Slochower* v. *Board of Education*, 350 U.S. 551 (1956); *Shelton* v. *Tucker*, 364 U.S. 479 (1960); *Torcaso* v. *Watkins*, 367 U.S. 488 (1961); *Wieman* v. *Updegraff*, 344 U.S. 183 (1952); *Cramp* v. *Board of Public Instruction*, 368 U.S. 278 (1961); and *Schware* v. *Board of Bar Examiners*, 353 U.S. 232 (1957).

Greene v. *McElroy, supra*, did not involve a constitutional decision, the Court saying: "The type of hearing was the product of administrative decision not explicitly authorized by either Congress or the President. Whether those procedures under the circumstances comport with the Constitution we do not decide." In *Slochower*, a teacher was discharged for invoking the Fifth Amendment before a Congressional Committee. In *Schware*, an applicant was arbitrarily denied the right to take a bar examination. In *Cramp*, a teacher was required to take an unconstitutionally vague loyalty oath. In *Wieman*, a public employee was required to take an unconstitutional loyalty oath. In *Torcaso*, a Maryland requirement that a public office holder declare his belief in God was unconstitutional. In *Shelton*, a teacher could not be compelled to file annually an affidavit listing every organization to which he had belonged within the preceding five years as a condition of employment.

On the other hand in *Beilan* v. *Board of Education*, 357 U.S. 399 (1958), it was held a Board of Public Education of Philadelphia could discharge a teacher who refused to answer questions asked by his Superintendent without violating the Constitution. And in *Cafeteria and Rest Workers Union* v. *McElroy*, 367 U.S. 886 (1961), it was held that a Commander of a Mili-

tary Base could, without notice or assignment of reason, discharge a civilian employee on the Base without violating any provision of the Constitution.[1]

In the other case cited by Petitioner, *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123 (1951), this Court held that an allegation that the Attorney General included an organization in a list of groups designated by him as Communists and transmitted such list to the Loyalty Review Board, all with-

---

[1] In *Cafeteria and Rest Workers Union* v. *McElroy*, the Court said: "As these and other cases make clear, consideration of what procedures due process may require under any given set of circumstances must begin with the determination of the precise nature of the Government function involved as well as of the private interest that has been affected by Governmental action. Where it has been possible to characterize that private interest (perhaps an oversimplification) as a mere privilege subject to the Executives plenary power, it has traditionally been held that notice and hearing are not constitutionally required. . . .

"What then was the private interest affected by Admiral Tyree's action in the present case? It most assuredly was not the right to follow a chosen trade or profession. Rachel Brawner remained entirely free to obtain employment as a short-order cook or to get any other job, either with M & M or with any other employer. All that was denied her was the opportunity to work at one isolated and specific military installation.

"Moreover, the governmental function operating here was not the power to regulate or license, as lawmaker, an entire trade or profession or to control an entire branch of private business, but rather, as proprietor, to manage the internal operation of an important Federal military establishment.

"Thus, the nature both of the private interest . . . and the governmental power which has been exercised makes this case quite different from that of the lawyer in *Schware, supra,* the physician in *Dent, supra,* and the cook in *Raich, supra,* . . . .

"We may assume that Rachel Brawner could not constitutionally have been excluded . . . if the announced grounds for her exclusion had been patently arbitrary or discriminatory—that she could not have been kept out because she was a Democrat or a Methodist."

out notice or hearing, stated a cause of action in the Federal Courts.

In *Sherbert* v. *Verner*, 374 U.S. 398, an unemployment compensation claimant who refused to work on Saturday because of her religious beliefs could not constitutionally be denied unemployment compensation for that reason, that being in violation of the Free Exercise Clause of the First Amendment.

None of these cases dealt with an election by an employer not to renew a contract of employment having ended at a fixed term. In all of these employment cases cited by Petitioner, there was something that the employee had to do or refrain from doing as a condition of his continued employment and those conditions were unconstitutional. There was always something more involved than just a decision to fire an employee.

Moreover, the private interest in the case at bar was to renew a lease which, by its terms, could not be renewed over objection by either landlord or tenant. If the local Housing Authority exercised any governmental function here, it was, as proprietor, to manage the internal operation of its housing units. Neither of these circumstances brings this case within the purview of any of the decisions of this Court holding actions of administrative agencies unconstitutional.

The North Carolina Housing Authority Law gives the Housing Authority ample power to enter into the lease, as is set forth in the record;[2] and such lease is not in violation of any Federal statute. The whole body of the State and Federal Legislation and Public Housing Administration Regulations have, since the beginning, contemplated the use of leases to govern

---

[2] N.C. G.S. 157-9 shown on page 24a of Petition.

the occupancy of dwelling units. The North Carolina Housing Authority Law specifically gives the Housing Authority the right to own this property and to lease the dwelling units therein. While there is careful limitation on the power of the Housing Authority to lease its dwelling units, insofar as the income of the potential tenants is concerned,[3] there is no stautory limitation upon the length of the term of any lease nor the conditions set upon the renewal of any lease.

The Housing Authority of the City of Durham did not perform a governmental function in its decision not to renew the Petitioner's lease. It did not purport to place the Petitioner on a list nor to classify her, and had no authority to do so. It did not purport to enact legislation, to prescribe rules having the effect of legislation.

The Housing Authority did not here purport to act as a Court or a Quasi Court, but took its case into the Courts of this State in a manner similar to any other private landlord.[4] In the State Courts, the Petitioner asserted her claim that she was being evicted because of her organizational activities, but the Court found as a fact that this was not the case (R. 5). On this record, the Petitioner seems reduced to the argument that the Housing Authority, as a sort of Quasi Court, should have held a pre-trial hearing before going into the Courts of the State, or should have proved a motive, acceptable to the Courts, upon the trial; and absent this, due process was not had. The Petitioner had ample opportunity to examine and cross-examine the Executive Director of the Housing Authority, either

---

[3] N.C. G.S. 157-29 shown on page 28a of Petition.

[4] G.S. 42-26, G.S. 42-31, G.S. 42-34—see appendix this Brief, pages 1a and 2a.

before or during the trial in the courts below and by appropriate discovery proceedings to examine any other officers or agents of the Housing Authority with respect to any pertinent question involved in the proceedings including motives, if any, for the eviction.[5] She did assert that the Housing Authority's motive in giving her notice that her lease would not be renewed was her organizational activities in the housing project, but the trial court found against her on this issue of fact. The Supreme Court of North Carolina on this record was clearly entitled to treat this as any other summary ejectment proceeding.

II.

There Is No Significant Conflict Among the Decisions of Lower Courts Upon the Issue Raised Here.

Walton v. *City of Phoenix*, 69 Ariz. 26, 208 P. 2d 309 (1949), *Chicago Housing Authority* v. *Ivory*, 341 Ill. App. 282, 93 NE 2d 386 (1950), *Brand* v. *Chicago Housing Authority* (CCA 7) 120 F. 2d 786 (1941), *Pittsburgh Housing Authority* v. *Turner*, 201 Pa. Super. 62, 191 A. 2d 869 (1963), *Columbus Metropolitan Housing Authority* v. *Simpson*, 85 Ohio App. 73, 85 NE 2d 560 (1959) are all in accord with the decision of the North Carolina Supreme Court in this case and are, on the facts presented, directly in point.[6]

---

[5] G.S. 1-568.10 & G.S. 1-568.11—see appendix this Brief, pages 3a and 4a.

[6] In *Walton* v. *City of Phoenix*, (69 Ariz. 26, 208 P.2d 309 (1949)), Undall, Justice, said in delivering opinion of Court: "It would seem to be defendant's contention that these state statutes (eviction statutes) have no application to other than private landlords and that insofar as the plaintiff is concerned the whole matter is governed and controlled by the United States Housing Act of 1937 as amended. Defendants, however, fail to direct our attention to any specific provisions of the Act which

In *Chicago Housing Authority* v. *Blackman,* 4 Ill. 2d 319, 122 N.E. 2d 522 (1954), tenants were served with notices terminating their tenancies for failure and refusal to subscribe to the Loyalty Oath required by Illinois Statute. In *Housing Authority of Los Angeles* v. *Cordova,* 130 Cal. App. 2d Supp. 883, 279 P. 2d 215 (1955), in a suit to evict tenants, the tenants filed answer alleging that the termination of their lease was unlawful in that the only reason therefor was tenants' refusal to sign a certificate that they were not members of organizations designated by the Attorney General of the United States as subversive. The Court denied the Housing Authority's motion for summary judgment on the pleadings, and the cause was remanded for trial upon the issues tendered. In *Lawson* v. *Housing Authority of Milwaukee,* 270 Wisc. 269, 70

---

support this theory. As a matter of fact, a reading of the entire act, with its amendments, as well as the related Federal Acts on National Housing, Title 50 U.S.C.A. War Appendix, leads one irresistibly to the opposite conclusion." In *Brand* v. *Chicago Housing Authority,* the Court said: "Any property right acquired by the plaintiffs was circumscribed by the terms and conditions upon which it was founded. True, as tenants, they acquired the right of possession, but this right was limited by the terms of the lease by which such right was obtained. By express provision thereof, either party was entitled to cancellation on fifteen days' notice to the other. It is our opinion that this provision with reference to the termination of the tenancy is valid and binding upon the plaintiffs in the same manner as though the lessor had been a private person rather than a Governmental Agency. . . . The fact that the Government selected plaintiffs as the object of such beneficence does not preclude it from determining at a later time that the purpose of the Act will be better served by the selection of some other family of the same or lower income class. To hold, as plaintiff would have us do, that the mere selection of a tenant carries with it a continuing right of tenure irrespective of the terms and conditions upon which the tenancy was founded, would not only contravene the purpose and policy of the Act, but would come near to destroying it."

N.W. 2d 605 (1965), the Housing Authority passed a Resolution which provided for non-membership in any organization designated as subversive by the Attorney General of the United States as a condition of eligibility for continued occupancy, and tenants brought the action for a declaratory judgment adjudicating said Resolution invalid and unconstitutional. The Court overruled a Demurrer to that Petition. In *Holt* v. *Richmond Housing Authority,* (E.D. Va. C.A. No. 4746 (1966)), the Court found as a fact that the tenant was given a notice of termination because he was President of the Civic Association. The Court cites *Housing Authority* v. *Thorpe,* the judgment of the Court below in case at bar, and said: "There, however, the Court found as a matter of fact that whatever may have been plaintiff's reason for terminating the lease, it was neither because the defendant had engaged in efforts to organize the tenants nor because she had been elected President of a tenant's group. It is that factual distinction which make that decision inapplicable to case at bar."

Rudder v. *United States,* 226 F. 2d 51 (D.C. Cir. 1955), and *Kutcher* v. *Housing Authority of Newark,* 20 N.J. 181, 119 A. 2d 1 (1955), where likewise cases holding that the efforts of the Housing Authorities to enforce the provisions of the so-called Gwinn Amendment enacted by the United States Congress in 1953 did not meet the requirements of due process.[7]

All of these cases are consistent with the decision of the North Carolina Supreme Court in this case. These

[7] The Gwinn Amendment provided "No housing unit constructed under the United States Housing Act of 1937, as amended, shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General . . ."

cases stand for the proposition that the Petitioner should assert the impropriety of the Housing Authority's motives or reasons for failing to renew her lease in the Courts of the land, including any effort by the Housing Authority to enforce the Gwinn Amendment. This she, in fact, did in this case and the Court found the facts against her. None of these cases suggested the invalidity of the form of leases used by the Housing Authorities and described in the letter from the Assistant Secretary for renewal and housing assistance, Department of Housing and Urban Development, which is set forth in Note 7 on page 9 of the Petition in this case.

The cases decided by lower Federal Courts involving the expulsion of students before they had finished their term of study are clearly not analogous. For one thing, there was no question of refusing to renew a contract, the term of which had expired, by notice provided for in the Contract. For another, there was evidence and there were findings that those expulsions were punitive measures taken because of student participation in Civil Rights activities. Such is not the case here. See *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930; *Woods* v. *Wright,* 334 F. 2d 369 (5th Cir. 1964); *Knight* v. *State Board of Education,* 200 F. Supp. 174 (M.D. Tenn. 1961). Moreover, there is a conflict apparently among the lower courts on this subject (see *Steier* v. *New York State Education Commissioner,* (CCA 2d) 271 F.2d 13 (1959)), which this Court has not resolved. The facts of the case at bar do not lend themselves to such resolution.

III.

This Case on Its Face Is Not of Sufficient National Importance To Require Review by This Court.

In this case the lease itself appears to be valid. There appears to be no contention that, insofar as its terms relevant to this case are concerned, it is oppressive or unreasonable when compared with leases available to people in general. Neither this State nor the Nation has a legal duty to supply housing for everyone, including the very poor. Eligibility here does not give rise to a right of possession of a particular dwelling unit, since, for one thing, there are many more eligible than there are dwelling units available. The whole history and philosophy of all the Federal and State statutes on the subject is to leave the selection of tenants, from among those eligible, to the Housing Authority. But the Housing Authority is not granted by any law, any powers exceeding that of a private landlord and certainly no powers similar to administrative agencies who, by statute, are designed to administer admissions to bar or expulsion from school. To dispossess this tenant, the Housing Authority went into the Courts of the State in the same manner as any other landlord, and a hearing was had—the fairness of which has not been called in question.

To require Housing Authorities to hold official hearings before electing not to renew leases of its tenants would seem to call for legislation vesting in such Authorities powers of a Quasi Judicial nature, making them into a Court—perhaps less impartial than the established Courts of the State. In fact, as cases cited show, the Courts have consistently protected tenants' rights when there was any finding some constitutionally protected right had been violated.

CONCLUSION

For the foregoing reasons the Housing Authority of the City of Durham respectfully submits that there is no Federal Constitutional basis for Petitioner to have any absolute right to a hearing before said Housing Authority upon its election not to renew her lease. She had a hearing in the Courts of North Carolina. In this hearing before the Courts of North Carolina, Petitioner asserted her allegations that her lease was not renewed for a possibly unconstitutional reason or reasons. The lower Court found as a fact that the reason or reasons for the Housing Authority's decision not to renew Petitioner's lease was not for the possibly unconstitutional reasons which she alleged. There is no cause shown for overriding that finding. Therefore, the Housing Authority of the City of Durham respectfully submits that Petitioner's Petition for a Writ of Certiorari to the Supreme Court of North Carolina should be denied.

Respectfully submitted,

DANIEL K. EDWARDS
WILLIAM Y. MANSON
111 Corcoran Street
Durham, North Carolina
Attorneys for Housing Authority of the City of Durham.

APPENDIX

State of North Carolina Statutory Provisions

Selected Provisions of the Statutes Relating to Actions in Ejectment

§ 42-26. Tenant Holding Over May Be Dispossessed in Certain Cases.—Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

1. When a tenant in possession of real estate holds over after his term has expired.

2. When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

3. When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated.

§ 42-31. Trial By Justice; Jury Trial; Judgment; Execution.—If the defendant by his answer denies any material allegation in the oath of the plaintiff, the justice shall hear the evidence and give judgment as he shall find the facts to be. If either party demands a trial by jury, it shall be granted under the rules prescribed by law for other trials by jury before a justice; and if the jury finds that the allegation in the plaintiff's oath, which entitles him to be put in possession, is true, the justice shall give judgment that the defendant be removed from and the plaintiff put

in possession of the demised premises, and also for such rent and damages as shall have been assessed by the jury, and for costs; and shall issue his execution to carry the judgment into effect.

§ 42-34. Undertaking on Appeal; When To Be Increased.—Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice; upon appeal to the superior court either plaintiff or defendant may demand that the same shall be tried at the first term of said court after said appeal is docketed in said court, and said trial shall have precedence in the trial of all other cases, except in cases of exceptions to homesteads: Provided, that said appeal shall have been docketed at least ten days prior to the convening of said court: Provided further, that in the event the trial before the justice of the peace takes place at least fifteen days prior to the convening of said superior court, said appeal shall, upon the demand of either plaintiff or defendant, be docketed in time to be tried at said first term of said superior court after said trial before the justice of the peace: Provided, further, that the presiding judge, in his discretion may make up for trial in advance any pending case in which the rights of the parties or the public require it; but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to

cover rents and damages for such period as to the court may seem proper, and if such tenant fails to show proper cause and does not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed.

Selected Provisions of North Carolina Statutes Relating to Examination of Parties

§ 1-568.10. Preliminary Procedure for Examination Before Examining Party's Initial Pleading Has Been Filed. —(a) Before a party has filed his complaint, petition or answer, he may, without notice to other parties, apply to the clerk or judge for an order for the examination of any person who may be examined by him as provided by G.S. 1-568.4.

(b) The application must be in the form of, or supported by, an affidavit showing:

(1) That the action has been commenced and the purpose thereof;

(2) That, in order to prepare his complaint, petition or answer, it is necessary for the applicant to secure information from the person proposed to be examined about certain matters, which mattters must be designated with reasonable particularity;

(3) That the information sought is not otherwise available to the applicant, together with a statement of the reasons therefor;

(4) That, if the person proposed to be examined is not a party, the action is being prosecuted or defended in his behalf, together with facts in support thereof;

(5) That the application is made in good faith; and

(6) That the examination should be held at a place designated in the affidavit, together with facts showing the reasons therefor.

(c) If the judge or clerk finds that the facts are as set out in the affidavit, he shall make an order:

(1) Appointing a commissioner to hold the examination;

(2) Fixing the time and place of the examination, subject to the provisions of G.S. 1-568.5;

(3) Directing the person to be examined to appear before the commissioner at such time and place for examination; and

(4) Designating the particular matters about which the person may be examined.

§ 1-568.11. Preliminary Procedure for Examination After Initial Pleadings Have Been Filed.—(a) After a party has filed his complaint, petition or answer, he may, without notice to other parties, apply to the clerk or judge for an order for the examination of any person who has also filed his complaint, petition or answer, as the case may be, or on whose behalf a complaint, petition or answer has been filed as provided by G.S. 1-568.4.

(b) The application must be in the form of, or supported by, an affidavit showing:

(1) That the action has been commenced;

(2) That the applicant has filed complaint, petition or answer;

(3) That the applicant desires to examine a designated person who has filed a petition, complaint or answer or on whose behalf a petition, complaint or answer has been filed;

(4) That the examination should be held at a place designated in the affidavit, together with facts showing the reasons therefor.

(c) If the judge or clerk finds that the facts are as set out in the affidavit, he shall make an order:

(1) Appointing a commissioner to hold the examination;

(2) Fixing the time and place of the examination, subject to the provisions of G.S. 1-568.5; and

(3) Directing the person to be examined to appear before the commissioner at such time and place for examination.

FILED
NOV 30 1966
JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

October Term, 1966

No. 712

Joyce C. Thorpe,

Petitioner,

—v.—

Housing Authority of the City of Durham.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Jack Greenberg
James M. Nabrit, III
Charles Stephen Ralston
Michael Meltsner
Charles H. Jones, Jr.
Sheila Rush Jones
10 Columbus Circle
New York, New York 10019

M. C. Burt
213½ West Main Street
Durham, North Carolina

Attorneys for Petitioner

Of Counsel:

Edward V. Sparer
Martin Garbus
Howard Thorkelson

INDEX

PAGE

There Was Not, and Was Not Permitted, a Fair and Adequate Hearing on the Reasons for Petitioner's Eviction in the North Carolina Courts 1

Table of Cases

Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961) 4

Ewing v. Mytinger & Casselberry, Inc., 339 U. S. 594 (1950) 3

Holt v. Richmond Housing Authority (E. D. Va., C. A. No. 4746 (1966)) 3

Steier v. New York State Education Commissioner, 271 F. 2d 13 (2nd Cir. 1959) 4

Swan v. Board of Higher Education of City of New York, 319 F. 2d 56 (2nd Cir. 1963) 4

In the

Supreme Court of the United States

October Term, 1966

No. 712

Joyce C. Thorpe,

Petitioner,

—v.—

Housing Authority of the City of Durham.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

There Was Not, and Was Not Permitted, a Fair and Adequate Hearing on the Reasons for Petitioner's Eviction in the North Carolina Courts

In response to the Petition for Writ of Certiorari, respondent Housing Authority contends that the writ should be denied because the petitioner had an opportunity to explore fully in the lower state courts the reasons for her eviction. Thus, respondent claims that, "The Petitioner had ample opportunity to examine and cross-examine the Executive Director of the Housing Authority . . . and . . . any other officers or agents of the Housing Authority with respect to any pertinent question involved in the proceedings including motives, if any, for the eviction" (Brief in Opposition, pp. 7-8).

This contention is not consistent with the decision below. The Court did not hold that petitioner had a right to a

hearing on the reasons, if any, for eviction. Rather, it held that, "It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease," 148 S. E. 2d 290, 292 (1966) (Appendix to Petition for Writ of Certiorari, p. 4a). The court below held that the Public Housing Authority, like any private landlord, has an absolute, unconditional, and uncontrolled power to terminate a lease for any reason or for no reason.

It follows that petitioner, and any other tenant of a public housing project in North Carolina, has no right whatsoever to question an eviction; any inquiry as to the reason is immaterial and irrelevant, and does not have to be answered as a matter of state law. Not only was no adequate hearing given, but, in effect, no hearing at all, since if no reason need be given for the authority's action, there can be no opportunity to rebut it or determine its validity.

Petitioner claims she was evicted as retaliation for her tenant organizing activities. The Housing Authority replies that she was not put out for her organizing activities, but that it is not going to tell her what the reason was, or even if it had any. The "hearing" in the state courts was without substance, hardly even *pro forma,* and the petitioner was unable to counter a flat, unsupported denial. No tenant, under these rules, can possibly contest eviction for false or unconstitutional reasons, or any reasons. Indeed, under the state supreme court's decision, the Authority did not even have to deny that the reason was what Mrs. Thorpe claimed it was. If, on the other hand, the Authority were required to give her notice of a valid reason

and if the alleged grounds might be controverted, if that were appropriate, a hearing would acquire substance.[1]

The petitioner's claim is a simple one: that at some point before valuable benefits conferred by the state are terminated by administrative action, she must be given a fair and adequate hearing to inquire into the basis and justification for such action, if any. We need not now consider whether the hearing need be afforded within the agency or before the courts, but it surely must be afforded somewhere. Cf., *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U. S. 594, 598 (1950). As long, however, as the decision of the North Carolina Supreme Court stands, no such opportunity exists anywhere.

Thus, this case presents squarely the question of whether a public agency, engaged in furnishing decent housing to those otherwise financially unable to obtain it,[2] has the same powers as a private landlord, or whether the due process clause of the Fourteenth Amendment imposes duties and limitations on it that protect the rights of re-

---

[1] This was precisely the result in *Holt* v. *Richmond Housing Authority* (E. D. Va., C. A. No. 4746 (1966)), cited at p. 10 of the Brief in Opposition. There, plaintiff alleged that he was being evicted because of his participation in a tenant's group. In response, the Housing Authority claimed the reason was that plaintiff had not reported all of his income, in violation of his lease. After a full hearing, the district court found that the ostensible reason was without basis, and concluded that the eviction had an improper motive.

[2] It is this factor that does, contrary to the contention of the respondent (Brief in Opposition, p. 12), raise a substantial question as to the validity of a lease provision that, as interpreted by the courts below, vests an unrestricted power to terminate an essential benefit at the whim of a governmental agency. The parties to the lease here have absolutely no equality of bargaining position. The would-be tenant must either accept whatever terms the state feels it wishes to impose or endanger the health and safety of herself and her children. See the cases and discussion in the Petition for Writ of Ceritorari, p. 17, n. 12.

cipients of the benefits it is charged by law to provide. In view of the great public importance of the issue and considering the questions of the applicability and interpretation of decisions of this and lower federal courts raised by the petition and the Brief in Opposition,[3] petitioner submits that it is essential that the petition be granted.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
MICHAEL MELTSNER
CHARLES H. JONES, JR.
SHEILA RUSH JONES
10 Columbus Circle
New York, New York 10019

M. C. BURT
213½ West Main Street
Durham, North Carolina

Attorneys for Petitioner

Of Counsel:

EDWARD V. SPARER
MARTIN GARBUS
HOWARD THORKELSON

---

[3] For example, the respondent argues that the school expulsion decisions such as *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961), are not applicable to the present case (Brief in Opposition, p. 11). Petitioner, on the other hand, contends that they govern, in that they establish the right to procedural protections, including notice of reason and hearing, before essential benefits are terminated. (Petition for Certiorari, pp. 15, 17, n. 12). See also, *Swan* v. *Board of Higher Education of City of New York*, 319 F. 2d 56 (2nd Cir. 1963), in which the Second Circuit cited the *Dixon* case with approval, apparently distinguishing its earlier decision in *Steier* v. *New York State Education Commissioner*, 271 F. 2d 13 (2nd Cir. 1959), cited by Respondent in its brief at page 11.

Office-Supreme Court, U.S.
FILED
JAN 18 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR PETITIONER

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
CHARLES H. JONES, JR.
MICHAEL MELTSNER
SHEILA RUSH JONES
10 Columbus Circle
New York, New York 10019

R. MICHAEL FRANK
1238A Carrollburg Place S.W.
Washington, D.C.

M. C. BURT
213½ West Main Street
Durham, North Carolina.

Attorneys for Petitioner

Of Counsel:
MARTIN GARBUS
EDWARD V. SPARER
HOWARD THORKELSON

INDEX

PAGE

Opinions Below 1

Jurisdiction 1

Question Presented 2

Constitutional and Statutory Provisions Involved 2

Statement 3

Summary of Argument 9

ARGUMENT:

Petitioner Was Denied Due Process of Law by Her Eviction from a State and Federally Supported Low-Income Housing Project in the Absence of any Procedures to Give Her any Notice of the Reason for the Eviction or any Hearing to Contest the Basis for the Governmental Action 12

Introduction 12

I. Public Housing Agencies May Not Evict Tenants Arbitrarily 14

II. Petitioner Was Entitled to Notice of the Reason Her Low-Income Housing Benefits Were Cancelled 23

III. Petitioner Was Entitled to an Administrative Hearing to Contest the Cancellation of Her Low-Income Housing Benefits 33

CONCLUSION 40

APPENDIX— PAGE

Excerpts from the United States Housing Act of 1937 (42 U.S.C. §1401 et seq.) 1a

Excerpts from the North Carolina "Housing Authorities Law" (Gen. Stats. of North Carolina, §157-1 et seq.) 10a

North Carolina Statutes Re Summary Ejectment (Gen. Stats. of North Carolina, §42-46 et seq.) 23a

TABLE OF CASES

Banks v. Housing Authority of City and County of San Francisco, 120 Cal. App. 2d 1, 260 P.2d 668 (1953), cert. denied, 347 U.S. 974 (1954) 20

Berman v. Parker, 348 U.S. 26 .....10, 26, 37

Bi-Metallic Inv. Co. v. State Board of Equalization, 239 U.S. 441 34

Chicago Housing Authority v. Blackman, 4 Ill.2d 319, 122 N.E.2d 522 (1954) 15

Chin Yow v. United States, 208 U.S. 8 34

Clearfield Trust Co. v. United States, 318 U.S. 363 ....11, 32

Coe v. Armour Fertilizer Works, 237 U.S. 413 33

Cramp v. Board of Public Instruction, 368 U.S. 278 (1961) 21

Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955) 20

Dixon v. Alabama State Bd. of Ed., 294 F.2d 150 (5th Cir. 1961), *cert. denied,* 368 U.S. 930 .....11, 30, 34

Frost Trucking Co. v. Railroad Commission, 271 U.S. 583 .....10, 29

Gonzales v. United States, 348 U.S. 407 .....24, 27

Greene v. McElroy, 360 U.S. 474 .....34-35, 39

PAGE

Hanover Fire Insurance Co. v. Carr, 272 U.S. 494 30
Holt v. Richmond Dedevelopment and Housing Authority, Civil Action No. 4746, E.D. Va., Sept. 7, 1966 .....15, 27, 28, 39
Housing Authority of Los Angeles v. Cordova, 130 Cal. App.2d 883, 279 P.2d 215 (App. Dept. Super. Ct. 1955) 15

I.C.C. v. Louisville & N. R. Co., 227 U.S. 88 .....11, 34

Japanese Immigrant Case (Yamataya v. Fisher), 189 U.S. 86 .....11, 34
Johnson v. Zerbst, 304 U.S. 458 30
Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 .....11, 25, 36-39
Jones v. City of Hamtramck, 121 F. Supp 123 (E.D. Mich. 1954) 20

Knight v. State Board of Education, 200 F. Supp. 174 (M.D. Tenn. 1961) 34
Kutcher v. Housing Authority of Newark, 20 N.J. 181, 119 A.2d 1 (1955) 15
Kwong Hai Chew v. Colding, 344 U.S. 590 34

Lawson v. Housing Authority of City of Milwaukee, 270 Wisc. 269, 70 N.W.2d 605 (1955), cert. denied, 350 U.S. 882 (1955) 15
Londoner v. Denver, 210 U.S. 373 .....11, 34

Morgan v. United States, 304 U.S. 1 .....10, 11, 24, 25, 27, 34
Morgan v. United States, 298 U.S. 468 34

NAACP v. Button, 371 U.S. 415 22
Ng Fung Ho v. White, 259 U.S. 276 37

PAGE

Ohio Bell Telephone Co. v. Public Utilities Com., 301 U.S. 292 14
Re Oliver, 333 U.S. 257 33

Powell v. Eastern Carolina Regional Housing Auth., 251 N.C. 812, 112 S.E.2d 396 (1960) 19

Rudder v. United States, 226 F.2d 51 (D.C. Cir. 1955) 14-15, 23

Shelton v. Tucker, 364 U.S. 479 30
Sherbert v. Verner, 374 U.S. 398 (1963) 10, 11, 14, 21, 29, 39, 40
Simmons v. United States, 348 U.S. 397 27
Slochower v. Board of Higher Education, 350 U.S. 551 ..... 11, 14, 30, 34
Southern R. Co. v. Virginia, 290 U.S. 190 ..... 11, 34
Speiser v. Randall, 357 U.S. 513 ..... 10, 11, 21, 29, 40
Steier v. New York State Educ. Com'r, 271 F.2d 13 (2d Cir. 1959), cert. denied, 361 U.S. 966 34
Swan v. Board of Higher Education, 319 F.2d 56 (2nd Cir. 1963) 34

Taylor v. Leonard, 30 N.J. Super. 116, 103 A.2d 632 (1954) 20
Torcaso v. Watkins, 367 U.S. 488 ..... 21, 30
Tucker v. Texas, 326 U.S. 517 ..... 10, 22, 23, 40

United Public Workers v. Mitchell, 330 U.S. 75 30
United States v. Allegheny County, 322 U.S. 174 32
United States v. Helz, 314 F.2d 301 (6th Cir. 1963) 32
United States v. Yazell, 382 U.S. 341 32

Vann v. Toledo Metropolitan Housing Authority, 113 F. Supp. 210 (N.D. Ohio, 1953) 20

PAGE

Wheeling Steel Corp. v. Glander, 337 U.S. 562 30
Wieman v. Updegraff, 344 U.S. 183 ..... 21, 22, 30
Williams v. City of Ypsilanti, C.A. No. 28936, D. Mich., 1966 15
Willner v. Committee on Character & Fitness, 373 U.S. 96 ..... 10, 11, 23, 34
Wong Yang Sung v. McGrath, 339 U.S. 33 34
Woods v. Wright, 334 F.2d 369 (5th Cir. 1964) 34

Yick Wo v. Hopkins, 118 U.S. 356 14

STATUTES AND REGULATIONS

28 U.S.C. § 1257 (3) 1

42 U.S.C. § 1401 ..... 2, 15, 18, 25, 32

42 U.S.C. § 1402 2

42 U.S.C. § 1404a 2, 16, 17

42 U.S.C. § 1410 (g)(3) 3, 16

42 U.S.C. § 1415 (7) 3, 18

Act of July 31, 1947, c. 418, § 2, 61 Stat. 705 (formerly 42 U.S.C. § 1413a) 17

Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d 20

24 C.F.R., Subtitle A, Part 1 20

Executive Order No. 11063, 27 Fed. Reg. 11527 (1962) 20

Housing and Rent Act of 1947, Title II, § 209 (b), 61 Stat. 201 17

Housing Act of 1948, Title V, § 502 (b), 62 Stat. 1284 17

PAGE

Gen. Stats. N.C. § 42-26 ..... 3, 6

Gen. Stats. N.C. § 42-28 ..... 3, 6

Gen. Stats. N.C. § 42-29 ..... 3, 6

Gen. Stats. N.C. § 42-30 ..... 3, 6

Gen. Stats. N.C. § 42-31 ..... 3, 6

Gen. Stats. N.C. § 42-32 ..... 3, 6

Gen. Stats. N.C. § 42-34 ..... 3, 6

Gen. Stats. N.C. § 157-1 ..... 3, 4, 15

Gen. Stats. N.C. § 157-2 ..... 3, 18, 19, 25, 26

Gen. Stats. N.C. § 157-4 ..... 3, 18

Gen. Stats. N.C. § 157-9 ..... 3, 4, 12, 38

Gen. Stats. N.C. § 157-23 3

Gen. Stats. N.C. § 157-29 ..... 3, 16

Gen. Stats. N.C. § 157-40 18

Gen. Stats. N.C. § 157-48 18

93 Cong. Rec. 6044 17

93 Cong. Rec. 9867 17

OTHER AUTHORITIES

1 *Davis, Administrative Law Treatise,* § 7.04 (1958) 34

Remarks of President Lyndon B. Johnson at Howard University, Wash., D.C., June 4, 1965, To FULFILL THESE RIGHTS, p. 4 37

Jones, The Rule of Law and the Welfare State, 58 COLUM. L. REV. 143 (1958) 35

PAGE

Millspaugh, Problems and Opportunities of Relocation, 26 LAW & CONTEMP. PROB. 6 (1961) 19

O'Neil, Unconstitutional Conditions: Welfare Benefits with Strings Attached, 54 CALIF. L. REV. 443 (1966) 30

Reich, Individual Rights and Social Welfare: The Emerging Legal Issues, 74 YALE L. J. 1245 (1965) .. 19, 35-36

Schorr, SLUMS AND SOCIAL INSECURITY (Dept. of H.E.W. Research Report No. 1) (U.S. Govt. Printing Office, Washington, D.C., 1963) 19

Sternlieb, TENEMENT LANDLORD, Rutgers Univ. Press (1965) 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR PETITIONER

Opinions Below

The opinion of the Supreme Court of North Carolina (R. 26-29) is reported at 267 N.C. 431, 148 S.E.2d 290 (1966). The judgment, including findings of fact and conclusions of law, of the Superior Court of Durham County (R. 19-23) is unreported.

Jurisdiction

The judgment of the Supreme Court of North Carolina was entered May 25, 1966 (R. 30). On August 12, 1966, the time for filing a petition for writ of certiorari was extended by Mr. Justice Brennan to and including October 21, 1966 (R. 31). The petition filed October 21, 1966, was granted December 5, 1966 (R. 32). Jurisdiction of this Court rests on 28 U.S.C. § 1257(3), petitioner having

asserted below and here the deprivation of rights secured by the Constitution and statutes of the United States.

Question Presented

Petitioner and her children have been tenants in a low-income housing project constructed with federal and state funds and administered by the Housing Authority of the City of Durham, an agency of the State of North Carolina, pursuant to federal and state laws and regulations. The day after petitioner was elected president of a tenants' organization in the project, the Housing Authority gave notice that it was cancelling her lease. Petitioner requested that the Housing Authority tell her the reasons for her eviction and give her a hearing. The Housing Authority refused to give her a reason or a hearing but initiated this summary ejectment action in a state court and obtained an order that petitioner be removed from the premises.

Under these circumstances, was petitioner denied rights granted by the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States?

Constitutional and Statutory Provisions Involved

This case involves the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

This case also involves the United States Housing Act, as amended, 42 U.S.C. § 1401 *et seq.* The following portions of the Housing Act are set forth in the Appendix, *infra*, pp. 1a to 9a:

42 U.S.C. § 1401
42 U.S.C. § 1402
42 U.S.C. § 1404a

42 U.S.C. § 1410(g)
42 U.S.C. § 1415(7)

This case also involves the North Carolina "Housing Authorities Law", Gen. Stats. of North Carolina, § 157-1 *et seq.* The following portions of the "Housing Authorities Law" are set forth in the Appendix, *infra*, pp. 10a to 22a:

N.C.G.S. § 157-2
N.C.G.S. § 157-4
N.C.G.S. § 157-9
N.C.G.S. § 157-23
N.C.G.S. § 157-29

The case also involves North Carolina statutes relating to summary ejectment proceedings, Gen. Stats. of North Carolina, § 42-26 *et seq.* The following sections are set forth in the Appendix, *infra*, pp. 23a to 27a:

N.C.G.S. § 42-26
N.C.G.S. § 42-28
N.C.G.S. § 42-29
N.C.G.S. § 42-30
N.C.G.S. § 42-31
N.C.G.S. § 42-32
N.C.G.S. § 42-34

Statement

On November 11, 1964, petitioner and her children became tenants in McDougald Terrace, a low-rent public housing project owned and operated by the Housing Authority of the City of Durham, North Carolina. The lease agreement under which petitioner has occupied the project had an initial term from November 11 to November 30, 1964 (R. 11). The lease further provided that it would

thereafter be automatically renewed for successive terms of one month at a rental of $29 per month, provided there was no change in her income or family composition or violation of the terms of the lease (R. 12).

The Housing Authority of the City of Durham was established under North Carolina law and is "a public body and a body corporate and politic, exercising public powers," Gen. Stat. of N.C. § 157-9. The Authority has "all the powers necessary or convenient to carry out and effectuate the purposes and provisions" of the North Carolina Housing Authority law (§§ 157-1 et seq., Gen. Stat. of N.C.), including the powers "to manage as agent of any city or municipality . . . any housing project constructed or owned by such city" and "to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project," Gen. Stat. of N.C. § 157-9. The Housing Authority operates McDougald Terrace as a low rent housing project "under its statutory authority and pursuant to its contract with the Federal government" (R. 5).

On August 10, 1965, petitioner was elected president of the Parents' Club, a group composed of tenants of the McDougald Terrace project (R. 6). The following day, August 11, 1965, the Housing Authority, through its executive director, delivered a notice that petitioner's lease would be cancelled effective August 31, 1965, at which time she would have to vacate the premises (R. 5-6); petitioner received this notice on August 12, 1965 (R. 6). In the notification the Authority gave no reasons for its action but merely mentioned a provision of the lease that it claimed permitted the landlord to cancel upon fifteen days notice (R. 18).[1] After she received the notice, peti-

[1] The text of the notice, dated August 11, 1965, is as follows:

Your Dwelling Lease provides that the lease may be cancelled upon fifteen (15) days written notice. This is to notify you that your

tioner, through her attorneys, by phone and by letter requested a hearing to determine the reasons for her eviction; the request was denied (R. 9). It was stipulated that "although the Housing Authority had a meeting on the subject the defendant was not given a hearing in which she herself was present and reasons assigned to her" (R. 6). Her attorney met with the Housing Authority and its executive director on September 1, 1965, and the attorney again asked for a hearing but the request was denied (R. 9). Petitioner averred, on information and belief, that on September 1, 1965, the Housing Authority held a meeting with a police officer who supplied information allegedly obtained in an investigation of petitioner (R. 9). However, neither petitioner nor her attorney were present at this meeting, and she was not confronted with her accuser, informed of the information supplied to the Housing Authority, or given any opportunity to rebut any charges made against her (R. 9).

In evicting petitioner without giving a reason or a hearing, the Housing Authority relied on a sentence in the lease which provides that: "The Management may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last day of the term" (R. 12). The lease, prepared by the Housing Authority, also contained a variety of other provisions for termination. One provision states that the lease "shall be automatically terminated at the option of the management" with an immediate right of reentry and all notices required by law waived, if the tenant misrepresents a material fact in his application or if "the tenant fails to comply with any of the provisions of this lease" (R. 16).

Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy (R. 18).

Among the enumerated provisions of the lease which a tenant must comply with, and which might support termination of the lease in the event of non-compliance, are agreements by the tenant, *inter alia,* to pay rent when due; to pay for damages to the premises; to pay a penalty for excess consumption of electricity, gas or water; not to assign the lease or sublet or accommodate boarders or lodgers or use the premises other than as a dwelling for the tenant and his family; to keep the premises in "a clean and sanitary condition"; to "maintain the yard in a neat and orderly manner"; to "assist in the maintenance of the project"; "not to use the premises for any illegal or immoral purposes"; not to keep dogs or pets; not to make repairs or alterations without consent; "to follow all rules or regulations prescribed by the Management concerning the use and care of the premises"; to permit management to enter for repairs, etc.; to submit an annual income statement to Management; and to notify Management "of any increase or decrease in family income or of any change in family composition or assets" (R. 13-14). Another section of the lease allows the Management to terminate on 30 days notice at the end of any calendar month if the tenant's income "exceeds the limits established for eligible occupancy" (R. 15). Still another section provides that the tenant will "promptly" vacate the premises if he falsely warrants that neither he nor any person who is to occupy the premises is a member of an organization listed as subversive by the Attorney General of the United States, or if he becomes a member of such an organization.

Despite the notice of cancellation of her lease, when she was given no reason and no hearing petitioner refused to vacate the premises. On September 17, the Housing Authority instituted a summary ejectment action against petitioner in the Justice of the Peace Court in Durham. See Gen. Stats. of N.C. § 42-26 *et seq., infra,* pp. 23a-27a.

On September 20, the Justice of the Peace ordered that petitioner be removed from the premises (R. 4-5). Petitioner appealed to the Superior Court of Durham County (R. 4), where evidence was submitted in the form of a stipulation and petitioner's affidavit.

In the Superior Court petitioner filed a motion to quash the eviction proceedings and alleged therein that she had a right to her apartment and that a deprivation of that right without a hearing violated due process of law. Further, it was alleged that the defendant's eviction resulted primarily from her activities as a organizer of tenants (R. 10-11). These allegations were supported by petitioner's affidavit (R. 7-10). In the stipulation entered into between petitioner and the Housing Authority (R. 7-10), it was stipulated, *inter alia,* that the Housing Authority did not give petitioner a reason for its termination of the lease nor did it give her a hearing despite her request for one; that on August 10, 1965, defendant was elected president of the Parents Club and that the eviction notice was sent out on August 11, and that the executive director of the Housing Authority would testify, as he had testified before the justice of the peace, that

> ... whatever reason there may have been, if any, for giving notice to Joyce C. Thorpe of the termination of her lease, it was not for the reason that she was elected president of any group organized in McDougald Terrace . . . and not for any of the other reasons set forth in the affidavit . . . (R. 7).

Finally, it was stipulated and agreed that the judge could determine the case by finding facts based on the stipulation and affidavits, *Ibid.*

On the basis of the stipulation, the Superior Court made the finding:

> That the plaintiff Housing Authority of the City of Durham . . . gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected president of a group organized in McDougald Terrace on August 19, 1965; that these were not the reasons said notice was given and eviction undertaken (R. 21).

The Court went on to find that the Housing Authority gave no reason to petitioner for terminating the lease and did not conduct any hearing at which the defendant was present or invited to be present to inquire into the reasons for terminating the lease and, further, that although the defendant requested a hearing, she had no hearing other than that "before the Justice of the Peace in this eviction action and in this Court" (R. 22). The Court then concluded as a matter of law that the Housing Authority of the City of Durham had no duty to hold a hearing on the subject of petitioner's eviction or to communicate or give to the defendant any reason for the termination. Thus, the Court affirmed the judgment of the eviction (R. 23).

Subsequently, petitioner appealed to the Supreme Court of North Carolina, raising as error the above findings of fact and conclusions of law (R. 25). On May 25, 1966, in a per curiam decision, the Supreme Court affirmed the order to evict. It held, in effect, that the Authority was under no obligation to conduct a hearing or advise the tenant of its reasons for terminating the lease, apparently since its obligations to its tenants were the same as the obligations of a private landlord. Thus, the Court said:

> It is immaterial what may have been the reasons for the lessor's unwillingness to continue the relationship

of landlord and tenant after the expiration of the term as provided in the lease (R. 26-28).

The petitioner and her children have remained in possession of their apartment under a stay granted by the Supreme Court of North Carolina, pending decision in this Court.

Summary of Argument

Petitioner was denied due process by the cancellation of her low-income public housing benefit without notice of the reason for eviction or any administrative hearing to contest the cancellation. Her claim arose on an assertion that her First Amendment rights were violated by the Housing Authority of the City of Durham, an agency of the state and federal governments subject to constitutional restraints. The courts below upheld the claim of the Authority that it could act arbitrarily, without a reason, relying on principles applicable to private landlords.

I.

Governmental agencies acting as landlords are nevertheless subject to Due Process restraints against arbitrary action. Nothing in either the federal or state statutes under which the Durham Authority was established confers an arbitrary power to evict. Indeed, arbitrary evictions subvert the purposes of the federal-state program to protect low income citizens from the effects of inadequate slum housing.

Overriding constitutional concerns defeat any claim of arbitrary power to evict public housing tenants. The governmental agencies plainly cannot evict for a variety of reasons under the Constitution, including racial or religious discrimination, suppression of free speech, or (as petitioner

charged) interference with the right of free association. Government may not condition the availability of public benefits so as to restrict First Amendment rights. *Sherbert* v. *Verner*, 374 U.S. 398; *Speiser* v. *Randall*, 357 U.S. 513. The general principle against arbitrary action by government officials applies with equal force to government housing project managers who claim broad authority over the lives of those living in the projects. *Tucker* v. *Texas*, 326 U.S. 517.

II.

Petitioner was entitled, at the bare minimum, to notice of the reason for the cancellation of her governmental benefit of low income housing. Notice of the ground for governmental action is basic to the concept of Due Process. *Morgan* v. *United States*, 304 U.S. 1; *Willner* v. *Committee on Character & Fitness*, 373 U.S. 96. The authority has no substantial interest in secrecy. Disclosure would promote responsible action by the agency and insure that there is a reason for its action. Secrecy merely shields arbitrariness. The petitioner's interest in low-income housing is precious. When denied decent housing she is remitted to the misery of the slums, a penalty which may be "an almost insufferable burden," *Berman* v. *Parker*, 348 U.S. 26, 32.

The housing agency may not make surrender of the right to notice a condition of tenancy because of the doctrine forbidding imposition of unconstitutional conditions as the price of governmental benefits. *Sherbert* v. *Verner*, 374 U.S. 398; *Speiser* v. *Randall*, 357 U.S. 513; cf. *Frost Trucking Co.* v. *Railroad Commission*, 271 U.S. 583. In any event, the lease was not a clear and explicit waiver of the right to notice of a reason for cancellation. Indeed, the lease should be construed to require the housing management to give a reason for eviction. The lease may be construed by

this Court under federal principles of law. *Clearfield Trust Co.* v. *United States,* 318 U.S. 363.

III.

Petitioner was entitled to an administrative hearing. An opportunity to offer proof when factual issues determine vital interests is basic to due process in administrative proceedings. The rule that a hearing is a fundamental requirement to preserve Due Process—freedom from arbitrary, capricious or discriminatory official action—has been developed in a variety of contexts. *Japanese Immigrant Case (Yamataya* v. *Fisher),* 189 U.S. 86; *Londoner* v. *Denver,* 210 U.S. 373; *Southern R. Co.* v. *Virginia,* 290 U.S. 190; *I.C.C.* v. *Louisville & N. R. Co.,* 227 U.S. 88; *Morgan* v. *United States,* 304 U.S. 1; *Slochower* v. *Board of Higher Education,* 350 U.S. 551; *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150 (5th Cir. 1961); *Willner* v. *Committee on Character & Fitness,* 373 U.S. 96.

By each of the tests stated by Mr. Justice Frankfurter in *Joint Anti-Fascist Refugee Comm.* v. *McGrath,* 341 U.S. 123, 163 (concurring opinion), petitioner is entitled to a hearing. Her injury is potentially grave; she has been treated arbitrarily. The Durham Housing Authority has statutory powers to conduct a hearing, including issuing subpoenas, administering oaths, and other incidents of fair procedure. Petitioner's First Amendment claim should be decided only after rigorous procedural safeguards. Such safeguards are needed to insure against arbitrariness.

Rejection of the right to a hearing on the basis of the lease provision was improper. The lease contained no express waiver of a hearing. For the government agency to require waiver of a hearing to obtain low-income housing is to impose an unconstitutional condition. *Sherbert* v. *Verner,* 374 U.S. 398; *Speiser* v. *Randall,* 357 U.S. 513.

ARGUMENT

Petitioner Was Denied Due Process of Law by Her Eviction From a State and Federally Supported Low-Income Housing Project in the Absence of Any Procedures to Give Her Any Notice of the Reason for the Eviction or Any Hearing to Contest the Basis for the Governmental Action.

Introduction

This case involves whether a municipal housing authority, acting as the agent of both the state and federal governments, violates the due process clauses of the Fifth and Fourteenth Amendments,[2] when it terminates housing benefits it is charged by law to furnish to a citizen, without affording the citizen either a statement of the reason for cancellation, or a hearing to contest its action. The case arises in the context of an assertion that petitioner was evicted to punish her exercise of First Amendment rights to freedom of association.

Although it is incontestable that the Housing Authority of the City of Durham is a governmental agency subject to the restraints of the Constitution, the Supreme Court of North Carolina decided that no procedural protection was required. Without mentioning the governmental char-

---

[2] The Due Process Clause of the Fourteenth Amendment applies to the Housing Authority of the City of Durham, because it is a state agency, established and operated in accordance with state law (R. 5; Gen. Stats. of N.C. § 157-9). The Due Process Clause of the Fifth Amendment is also applicable because the Authority acts as an "agent for the federal government" (Gen. Stats. of N.C. § 157-9) in the operation and management of the housing project pursuant to a contract with the Federal Government (R. 5). By law the Authority is a "public body and a body corporate and politic, exercising public powers" (Gen. Stats. of N.C. § 157-9) (*infra*, Appendix, p. 14a).

acter of the agency, the Court applied to it the same legal principles that it would apply to a private non-governmental landlord. The State Court thus sanctioned and enforced the Authority's action cancelling petitioner's benefits under the public housing laws at its mere will or whim. It reasoned that petitioner had no rights to the housing except those conferred by her lease; that under the lease the Housing Authority had the right to terminate; and that it "is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease" (R. 28).

On this record it cannot be assumed that the Authority acted on any reasonable ground. Rather, it was testing its right to be arbitrary, capricious and unreasonable, and the Court thus sanctioned wholly arbitrary governmental action. This, we submit, is the net effect of the proceedings below, which included: (1) petitioner's affidavit that she was evicted the day after she was elected President of a tenant organization and that she believed the reason was an official's opposition to her effort to organize tenants (R. 8); (2) the official's stipulated testimony that his reason "if any" was not the reason alleged by plaintiff (R. 7); (3) the trial court's decision that the authority had no "duty to communicate or give . . . any reason" (R. 23); (4) confirmed by the appellate decision that the reason "is immaterial" (R. 28). Plainly, the case was viewed by the parties and the courts below as a test of the right of the Authority to evict arbitrarily and without any reason, any statement of a reason, or any hearing on the reason or lack of a reason.

Petitioner urges in detail below that the result reached in the state courts is inconsistent with the requirements of Due Process. We urge, first, that the Constitution pre-

cludes arbitrary, discriminatory or capricious action to withhold from an individual the benefits of the state-federal public housing program for the poor. Second, we submit that a minimum necessary protection against arbitrary action is that the Housing Authority be required to reveal the reason for its action. Third, we assert that due process requires that tenants in low-income governmentally operated projects be given some opportunity to be heard in order to offer such proof as may be appropriate to contest the asserted factual basis for the government's eviction orders.

I.

Public Housing Agencies May Not Evict Tenants Arbitrarily.

We urge that the Court reject the Durham Housing Authority's claim of an absolute and arbitrary power to deny the benefits of its program for low-income families at its mere will or whim. Such a claim comes late, far too late, in our constitutional history.[3] As a unanimous Court said in 1886: "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and view the history of their development, we are constrained to conclude they do not mean to leave room for the play and action of purely personal and arbitrary power." *Yick Wo* v. *Hopkins,* 118 U.S. 356, 369. The essence of Due Process is "the protection of the individual against arbitrary action." *Ohio Bell Telephone Co.* v. *Public Utilities Com.,* 301 U.S. 292, 302 (Mr. Justice Cardozo); *Slochower* v. *Board of Higher Education,* 350 U.S. 551, 559. This was stated with clarity in its application to a government housing authority in *Rud-*

[3] Cf. *Sherbert* v. *Verner,* 374 U.S. 398, 404-405, and cases cited.

der v. *United States,* 226 F.2d 51, 53 (D.C. Cir. 1955), where Judge Edgerton wrote:

> The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process.

Similar reasoning has been followed—and we think rightly so—by state courts in New Jersey, California, Wisconsin and Illinois, holding that public housing authorities are subject to the Due Process Clause. *Kutcher* v. *Housing Authority of Newark,* 20 N.J. 181, 119 A.2d 1 (1955); *Housing Authority of Los Angeles* v. *Cordova,* 130 Cal. App.2d 883, 279 P.2d 215 (App. Dept. Super. Ct. 1955); *Lawson* v. *Housing Authority of City of Milwaukee,* 270 Wisc. 269, 70 N.W. 2d 605 (1955), cert. denied, 350 U.S. 882 (1955); *Chicago Housing Authority* v. *Blackman,* 4 Ill. 2d 319, 122 N.E. 2d 522 (1954). Cf. *Williams* v. *City of Ypsilanti,* Civil Action No. 28936, D.Mich., 1966 (Temporary injunction barring eviction of woman who had an illegitimate child); *Holt* v. *Richmond Redevelopment and Housing Authority,* Civil Action No. 4746, E.D. Va., Sept. 7, 1966. The Housing Authority's claim to arbitrary power must be found wanting for a host of reasons.

There is nothing in either the federal[4] or state acts[5] creating the publicly supported low-income housing program administered by the Durham Authority which expressly confers an arbitrary power to evict, or otherwise withhold the benefits of the program. Neither of the two provisions of the federal law which authorize the local

---

[4] The United States Housing Act of 1937, as amended, 42 U.S.C. §1401 *et seq.*, p. 1a, Appendix, *infra.*

[5] The North Carolina "Housing Authorities Law," Gen. Stats. of North Carolina, § 157-1 *et seq.*, p. 10a, Appendix, *infra.*

agencies to require tenants to move from low-income projects (42 U.S.C. §1410(g)(3) and 42 U.S.C. §1404a) grants arbitrary power; both provisions are related to a policy of limiting occupancy to low-income families. The only provision of the state "Housing Authorities Law" about tenant selection also refers only to the income limitation (Gen. Stats. N.C. §157-29). The text of 42 U.S.C. §1410 (g)(3) (Appendix, infra, p. 7a), makes plain that it relates only to enforcement of maximum income limitations in low-income projects.[6] The other provision, 42 U.S.C. §1404a, serves this same purpose, although the purpose becomes completely apparent only from review of the legislative history. Section 1404a, provides, *inter alia:*

> Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in limitation hereof, *the Public Housing Administration, or any State or local public agency administering a low-rent housing project* assisted pursuant to this chapter or sections 1501-1505 of this title, *shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered, and, in determining net income for the purposes of tenant eligibility* with respect to low-rent housing projects assisted pursuant to this chapter and sections 1501-1505 of this title, *the Public Housing Administration is authorized,* where it finds such action equitable and in the public interest, *to exclude amounts or portions*

[6] The provision, added in 1961, 75 Stat. 164 (Act of June 30, 1961, Section 205) states that federal contribution contracts must provide that local agencies make periodic reexaminations of tenant's incomes and require tenants above the maximum income limits to move from the project, except in special circumstances.

thereof paid by the United States Government for disability or death occurring in connection with military service. (Emphasis supplied.)

The history of the provision, and its statutory predecessor amply demonstrates that §1404a was enacted to allow eviction of tenants above the income limits for low-income projects; nothing in the legislative history supports a claimed power to evict without cause.[7] There is no in-

---

[7] The quoted provisions of section 1404a were enacted in the Housing Act of 1948, Title V, §502(b), 62 Stat. 1284. This was a reenactment, with slight changes of wording, of a provision adopted a year earlier in the Housing and Rent Act of 1947, Title II, §209(b), 61 Stat. 201.

Senator Ellender, who introduced the Section as an amendment made clear that the purpose was to permit evictions to enforce the income limitations:

> "MR. BUCK. As I understand the amendment, it would permit the Housing Authority to remove from public housing units tenants who are now earning an income greater than that which would enable them to qualify for occupancy of low-cost public housing units?"
>
> "MR. ELLENDER. That is correct. . . . There are many tenants in some of the public housing projects at the moment who can pay an economical rent. . . . [T]he purpose of the amendment is to make it possible for the authorities in charge of public housing to be able to evict those who are not entitled to be there." 93 *Cong. Rec.* 6044 (1947).

One month after the 1947 version was enacted, Congress passed a law allowing local agencies to postpone the commencement of eviction proceedings until March 1, 1948, if undue hardship would result for the occupants. Act of July 31, 1947, C.418, §2, 61 Stat. 705, (formerly 42 U.S.C. §1413a).

As indicated the 1948 version was basically a reenactment of the provision inserted in 1947. The 1948 version was proposed by a Senate subcommittee; the chairman made clear that it was a "provision for the eviction of over-income tenants." 94 Cong. Rec. 9867 (1948) (remarks of Senator McCarthy):

> . . . [W]e also have a provision for the eviction of over-income tenants in the present 190,000 public housing units. We do not provide that they must be evicted instanter. We provide that the F.P.H.A., the local housing agency, shall evict them in an orderly manner, and I understand they have a program of evicting 5 per cent each month on 6 month's notice.

dication that Congress made a judgment to grant arbitrary power.

Furthermore, the claim of arbitrary power is inconsistent with the expressed purposes of the state-federal low-income housing program. The policy of the United States is:

> . . . to promote the general welfare of the Nation by employing its fund and credit, . . . to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. 42 U.S.C. §1401.

The North Carolina enactment contained an even more detailed declaration of the necessity of the program for low-income housing to correct conditions which it found "cannot be remedied by the ordinary operation of private enterprise." Gen. Stats. N.C. § 157-2 (reprinted Appendix, *infra*, p. 10a).[8] Indeed, there must be specific findings as to the need for low income housing in order for a municipality to establish a housing authority under the North Carolina law (Gen. Stats. of N.C. § 157-4), or for such an authority to obtain federal funds (42 U.S.C. § 1415(7)). The state and federal statutory schemes make it plain that the public housing agencies are not acting as private landlords, furnishing housing as business proprietors. The program is rather an exercise of the general governmental power to protect the health, safety, and welfare of an

[8] See also the similar declarations in Gen. Stats. of N.C. §§ 157-40, 157-48.

economically disadvantaged segment of the citizenry.[9] The initiation of the program rested on explicit recognition of the fact that without public housing large number of persons would be condemned to live in urban and rural slums, suffering all the injuries stemming from unsafe and unsanitary dwellings.[10]

A power to evict tenants of public housing capriciously or without a reason is not merely inconsistent with the purposes of the program; it actually undermines and subverts them. Such arbitrary power necessarily places public housing tenants in "a state of insecurity," as the commentators have observed.[11] Thus, the intended benefits—family stability and security in a decent and safe environment—are negated. This naturally reduces the attractiveness of public housing for slum residents, even though housing is their primary problem.[12] More directly, of

---

[9] As stated in *Powell* v. *Eastern Carolina Regional Housing Auth.*, 251 N.C. 812, 112 S.E.2d 386, 387, "The Legislature authorized the creation of housing authorities as a means of protecting low-income citizens from unsafe or unsanitary conditions in urban or rural areas, G.S. § 157-2."

[10] Gen. Stats. of N.C. § 157-2, found, *inter alia*, "the existence of housing conditions which endanger life or property by fire and other causes", and that "these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens. . . ."

[11] Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L. J. 1245, 1250. As observed by Alvin Schorr of the U. S. Dept. of Health, Education, and Welfare, some tenants find housing regulations and penalties "to be precisely a confirmation of their greatest anxiety, that they were being offered decent housing in exchange for their independence." Schorr, SLUMS AND SOCIAL INSECURITY (Dept. of H.E.W. Research Report No. 1), p. 112 (U.S. Govt. Printing Office, Washington, D. C. 1963).

[12] Studies indicate the distaste of slum residents for the rules, regulations and control over their lives which accompany public housing, and the marked lack of desire of many eligible slum residents to move to public housing. Sternlieb, THE TENEMENT LANDLORD, Rutgers Univ. Press (1965), pp. 14-15; Millspaugh, *Problems and Opportunities of Relocation*, 26 LAW & CONTEMP. PROB. 6, 11-12 (1961).

course, every actual exercise of an arbitrary power to evict a public housing tenant, remits the tenant and his family to the slums, subjecting them to all the injuries stemming from residence in unsafe and unsanitary dwellings, which the program is supposed to prevent.

Of course, putting aside the provisions and purposes of the housing acts, there are overriding constitutional concerns which make it plain that the claimed right to act for any reason, or for no reason, must fail. There plainly are *some reasons* which could not constitutionally support housing authority action. For example, it has been widely held that a public housing authority violates the Fourteenth Amendment by a policy of *refusing to lease* units to qualified Negroes because of their race. *Detroit Housing Commission* v. *Lewis,* 226 F.2d 180 (6th Cir. 1955).[13] Race, or a desire to enforce racial segregation, must equally be a forbidden ground for *eviction* from a government project, lest the power to discriminate be absolute.

It should be equally be made clear that a public housing authority may not bar citizens on the basis of their religion, or their ideas on public issues in violation of First Amendment guarantees. Petitioner's case arises not from a racial discrimination claim, but, rather, in the context of her assertion that she is being punished for exercising First Amendment rights of free association in a tenant's

---

[13] Other such cases are *Jones* v. *City of Hamtramck,* 121 F. Supp. 123, (E.D. Mich. 1954); *Vann* v. *Toledo Metropolitan Housing Authority,* 113 F. Supp. 210 (N.D. Ohio 1953); *Banks* v. *Housing Authority of City and County of San Francisco,* 120 Cal. App.2d 1, 260 P.2d 668 (1953), *cert. denied,* 347 U.S. 974 (1954); *Taylor* v. *Leonard,* 30 N.J. Super. 116, 103 A.2d 632 (1954). See Executive Order No. 11063, 27 Fed. Reg. 11527 (1962), prohibiting racial discrimination in federally assisted housing. And see Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d, and the implementing regulations (24 C.F.R., Subtitle A, Part 1) prohibiting discrimination in federally assisted programs, including low-rent housing projects.

organization. This Court's decisions expressing concern for the procedures by which First Amendment claims are determined (cf. *Speiser* v. *Randall,* 357 U.S. 513), leave no room for an absolute power to conceal violations of the Amendment. This Court has condemned rules which condition the availability of public benefits so as to restrict First Amendment rights. In *Sherbert* v. *Verner,* 374 U.S. 398, 404, the Court said:

> It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege. American Communications Asso. v. Douds, 339 U.S. 382, 390; Wieman v. Updegraff, 344 U.S. 183, 191, 192; Hannegan v. Esquire, Inc., 327 U.S. 146, 155, 156. . . . In Speiser v. Randall, 357 U.S. 513, we emphasized that conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms.

The principle was applied in *Speiser* v. *Randall,* 357 U.S. 513, to invalidate state action limiting the availability of a tax exemption in a manner which inhibited free speech. The rule is necessary lest the State "produce a result which . . . [it] could not command directly" 357 U.S. at 526. Applying these principles, we submit that it could not be gainsaid that a public housing authority could not bar a citizen from occupancy in a project for failure to make a religious oath (cf. *Torcaso* v. *Watkins,* 367 U.S. 488), or for refusal to make an unconstitutionally vague oath (cf. *Cramp* v. *Board of Public Instruction,* 368 U.S. 278, 288), or to punish innocent membership in a proscribed organization (cf. *Wieman* v. *Updegraff,* 344

U.S. 183, 192),[14] or to suppress freedom of association to advance political views (cf. *N.A.A.C.P.* v. *Button*, 371 U.S. 415). There is no reason whatever to suppose that the restraints of the Constitution do not apply with equal force to the manager of a federally operated or supported housing project. *Tucker* v. *Texas*, 326 U.S. 517.

Tucker v. *Texas, supra,* held that the manager of a federal housing development for defense workers unconstitutionally suppressed the distribution of religious literature by seeking to exercise a licensing power. This manager had claimed "full authority to regulate the conduct of those living in the village" (326 U.S. at 519), in support of his order that a Jehovah's Witness discontinue all religious activity in the village (*id.*). The Court rejected the claim of arbitrary power over freedom of the press and religion and reversed state criminal convictions which enforced the manager's invalid assertion of authority over the tenants' lives.

We submit that reason and authority reject the Durham Authority's claimed right to act unreasonably in terminating the benefits of the program it administers. Of course, the Authority, like other governmental agencies, may constitutionally be given a substantial degree of control over the use and occupancy of its projects, to efficiently manage and fulfill the purposes of its program. We do not stop to fully explore the detailed scope of the Authority's power to make, and to enforce by evictions, rules for the conduct of tenants needed to protect its property and other tenants, because no one would deny that

---

[14] The Court said in *Wieman* (*supra,* 344 U.S. at 192):

> We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory.

the Authority must have powers to accomplish these ends. The issue here is not whether a public housing agency may evict on a reasonable ground, or whether or not a particular ground is reasonable. The issue is whether a government agency may evict for an unreasonable, arbitrary and capricious reason, recognizing that the power to be capricious includes a practical power to act for reasons specifically forbidden by the Constitution. The answer to *that* question must be negative if there is to be any protection at all for the civil rights and civil liberties of public housing tenants. *Rudder* v. *United States,* 226 F.2d 51 (D.C. Cir. 1955). Otherwise, minor bureaucrats—housing project managers—are granted "full authority to regulate the conduct of those living in the [project]." *Tucker* v. *Texas,* 326 U.S. 517, 519.

So we now turn to another vital question. What does procedural due process require to give protection against discriminatory, arbitrary, capricious and unconstitutional action terminating public housing benefits?

II.

Petitioner Was Entitled to Notice of the Reason Her Low-Income Housing Benefits Were Cancelled.

Whatever may be decided with respect to petitioner's claim (discussed in Part III below) that she had a right to a hearing before eviction, petitioner was at the very least entitled to notice of the reason, if any, for the Housing Authority's action requiring her to move from the project. Notice of the reasons for proposed governmental action adversely affecting a citizen's interests has been regarded as an essential element of due process in a variety of contexts. *Willner* v. *Committee on Character &*

Fitness, 373 U.S. 96, 105-106; *Morgan* v. *United States*, 304 U.S. 1, 18, 19; cf. *Gonzales* v. *United States*, 348 U.S. 407. If there is even to be any potential protection against arbitrary action by public housing officials, the officials must at the very least be required to formulate and articulate a reason for an eviction, and notify the tenant of that reason in writing. Notice of reasons would at least offer a possibility of relief if an official is mistaken about the facts and he or some reviewing authority can be persuaded that he is mistaken, or if the official is mistaken about the law and it can be shown that the proposed action violates the law, or if the official acts contrary to policy established by superior administrative officials. A requirement that the housing agency state its reason for terminating low income benefits serves the salutary function of requiring that the agency act responsibly and actually have a reason. It is a protection against capricious action.

The Authority has no substantial interested to be served by keeping its reason secret. Such secrecy does nothing to further the purposes of the state-federal program to provide housing assistance to the poor. We have seen no proffered justification for a policy of secrecy. If the Housing Authority has a good reason for evicting a tenant, there is no impediment to its stating that reason and relying on it as the basis for eviction. There are no considerations of immediate danger to the public or of peril to the National Security or other similar factors which might justify the Authority's reluctance to give tenants notice of the reasons for eviction. The Authority's refusal to accord its tenants reasonable protection can only help to break the spirits of the evicted tenants, and of other members of the community familiar with the injustice, and increase the apathy and despair of the impoverished. The policy of secrecy serves only as a shield for arbitrariness.

It is, of course, more convenient for a bureaucrat to have arbitrary power and to be unaccountable for his acts. But as Mr. Justice Frankfurter put it: "Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 171 (concurring opinion). Indeed, it is in the "manifest interest" of government agencies to be fair, and to appear to be fair, in their dealings with citizens they are charged with assisting. Cf. *Morgan* v. *United States*, 304 U.S. 1, 22. A policy of secrecy in evictions sacrifices the deterrent value which might be gained from announced enforcement of reasonable rules and regulations, and merely promotes generalized fear and insecurity on the part of tenants.

The tenant of public low income housing has a strong interest in continued eligibility for public housing benefits and in being informed of the reason the authorities may have for cancelling such benefits. The value of the tenant's interest in public housing may be measured by the governmental findings which justify providing the benefits (42 U.S.C. §1401; Gen. Stats. of N.C. §157-2). The essence of the matter is that the tenant is provided public housing only because he would be otherwise unable to obtain decent and sanitary housing, and when the tenant is denied decent housing he is remitted to slums, including:

> . . . such unsafe or unsanitary conditions [that] arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; * * * [which] conditions cause an increase in and spread of disease and

crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values . . . " (Gen. Stats. of N.C. §157-2).

The federal and state governments have found that unless they provide Mrs. Thorpe and others in her economic position decent and sanitary housing, they will be condemned to live in slum conditions which pose a constant threat to their health, safety and morals. Thus, the interest of petitioner is no less than the interest in being able to live at a minimum level of decency and comfort. And, of course, petitioner, and society in general have an interest in her freedom to exercise her rights of free speech and free association without fear of a crushing reprisal.

The effect of being remitted to live in slum conditions can be incalculable. It is punishment in a real sense. The impact of such decisions on the children of the poor may influence the entire course of their lives. And where a Negro family is involved, as in petitioner's case, a return to the slums may quite likely mean a return to a racial ghetto. This Court described the problem in *Berman* v. *Parker*, 348 U.S. 26, 32, where Mr. Justice Douglas wrote:

> Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden.

The tenant's interest in knowing the grounds for eviction is compelling. This minimal protection against arbitrariness may at least afford a channel for relief in some cases of injustice. Knowing the ground for the official action may afford a basis for informal complaint or request for

reconsideration, for an appeal to higher executive authority, for an appeal for legislative reform or relief, or for an appeal to the courts. Minimal fairness requires that petitioner be apprised of the reason for a curtailment of benefits she is entitled to receive under a program of benefits for poor persons. Petitioner is entitled to know the claims of those who would deprive her of governmental benefits. *Morgan* v. *United States,* 304 U.S. 1. The right to know a reason for official action is vital so long as there remains any conceivable method, however informal, of influencing that action. *Gonzales* v. *United States,* 348 U.S. 407, illustrates the point. In *Gonzales, supra,* a draft registrant was held entitled to have a copy of an "advisory recommendation" made by the Department of Justice to his Selective Service Appeal Board, and to an opportunity to file a reply. Though there was no hearing before the appeal board and the statute involved was silent on the right to know the recommendations, the Court found that this right was implicit in the Act "viewed against our underlying concepts of procedural regularity and basic fair play" (348 U.S. at 412).[15]

The great value to a tenant of a rule requiring that the Housing Authority disclose its asserted justification for eviction is demonstrated by a recent case involving claims similar to petitioner's. In *Holt* v. *Richmond Redevelopment and Housing Authority,* Civil Action No. 4746, E.D. Va., September 7, 1966, a tenant sued under 42 U.S.C. §1983 to restrain his eviction from a public housing project on the ground that the authority's purpose was to punish him for his tenant-organizing activities. The housing authority answered by asserting that the reason for eviction

[15] Cf. *Simmons* v. *United States,* 348 U.S. 397, finding a deprivation of the fair hearing required by the selective service law in the failure to furnish a fair resume of an adverse FBI report considered by the hearing officer.

was the plaintiff's failure to report all of his income in violation of a lease provision, and not his organizing activities. The plaintiff then proved the circumstances concerning his income and his organization's disputes with the authority. The Federal District Court (Butzner, *J.*) found the authority's asserted reason for eviction unfounded, and that the actual reason was plaintiff's constitutionally protected activity, and restrained the eviction. *Holt, supra,* clearly shows the vice of the rule (applied in this case) that the reason for eviction is "immaterial."

In the Brief in Opposition to the petition for certiorari respondent suggests that petitioner could have learned the "motives, if any, for the eviction," in the course of the summary ejectment proceedings, by cross-examination of the housing director either during trial or by pre-trial discovery. (Brief in Opposition, pp. 7-8). But the courts below never rested on this ground. They took the view that the Housing Authority had no duty to communicate a reason (R. 23), and that the reason was "immaterial" in a determination of the Authority's right of possession (R. 28). The case was tried as a test of the Authority's right to act without a reason, as clearly indicated by the stipulation that the Housing Director would testify, as he had before the Justice of the Peace that "whatever reason there may have been, *if any,* for giving notice . . . it was not for the reason" of petitioner's organizing activities. (Emphasis supplied). There was no suggestion that the Authority had any reason which it was prepared to divulge and rely on. Finally, petitioner urges that disclosure in court would not in any event cure the failure to give a reason at the time her benefits were cancelled. An important ground for requiring that the Authority state a reason is to insure that the Authority will actually

formulate a reason and act responsibly in cutting off governmental benefits. This objective is not accomplished by disclosure of a reason for the first time in court, when the reason may be merely a *post facto* attempt to justify that which was done for no good reason. Low-income housing officials deal with tenants who are impoverished, and are often ignorant of their rights. The tenants will not often know whether to resist an order to move unless they know the grounds of the agency's action. They will rarely have lawyers or the resources to go to court to find out why they are being evicted. They should at least be told why they are being subjected to eviction—a punishment that is real and severe.

The courts below decided that petitioner had no right to be informed of the grounds for eviction by relying on the provisions of the lease. This was, in effect, a ruling that petitioner had waived the claimed constitutional right to notice of the reason for eviction. Conceding, *arguendo*, that the lease permits eviction arbitrarily and unconstitutionally, we urge that the government may not validly exact such an unconstitutional condition as the price of obtaining low-income public housing benefits. The state-federal agency may not exact surrender of the right to be treated fairly and reasonably as the price of the opportunity to obtain decent quarters under a government program for the poor. In *Sherbert* v. *Verner*, 374 U.S. 398, 404, this Court held that a state could not condition the granting of unemployment benefits on the surrender of First Amendment rights to the free exercise of religion. The rule against unconstitutional conditions protected free speech in *Speiser* v. *Randall*, 357 U.S. 513. The rule proscribing the imposition of unconstitutional conditions has also been applied in cases that involved: use of public highways, *Frost Trucking Company* v. *Railroad Commission*, 271 U.S. 583; foreign

corporations doing business in a state, *Hanover Fire Ins. Co.* v. *Harding*, 272 U.S. 494; *Wheeling Steel Corp.* v. *Glander*, 337 U.S. 562; and public employment, see, *Torcaso* v. *Watkins*, 367 U.S. 488; *Shelton* v. *Tucker*, 364 U.S. 479; *United Public Workers* v. *Mitchell*, 330 U.S. 75, 100. See also, *Slochower* v. *Board of Education*, 350 U.S. 551, 555; *Wieman* v. *Updegraff*, 344 U.S. 183, 191. And see, O'Neil, *Unconstitutional Conditions: Welfare Benefits with Strings Attached*, 54 Calif. L. Rev. 443 (1966).

As the United States Court of Appeals for the Fifth Circuit said in *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961), upholding the right of students to a hearing before expulsion from a public college for alleged misconduct: "the right to notice and a hearing is so fundamental to the conduct of our society that the waiver must be clear and explicit" 294 F.2d at 157. Cf. *Johnson* v. *Zerbst*, 304 U.S. 458. The alleged waiver of notice of the reasons for eviction in Mrs. Thorpe's lease, is by no means "clear and explicit." There is nothing in the lease which expressly grants the right to evict without stating a reason. Indeed, we submit that—far from supporting a finding of waiver—ordinary principles of interpretation support a holding that this lease does require that a ground for eviction be stated in writing. This follows from any effort to read the variety of provisions allowing the management to terminate so that they are mutually consistent.

The lease states that it "shall be automatically renewed for successive terms of one month each" at a rental of $29, provided, "there is no change in the income or composition of the family of the tenant and no violation of the terms hereof" (R. 12). The lease has four provisions for termination by management: one allows termination on 30 days notice; another requires only 15 days notice;

another provides termination "automatically at the option of the management" without notice; and, another requires the tenant to vacate "promptly." [16] Unless the lease requires written notice of the reason for eviction, the tenant cannot know how much notice he is entitled to receive. The lease clearly does not contemplate, for example, that a tenant be evicted on no notice, or on only fifteen days notice, if the manager's reason is that the tenant's income makes him ineligible. And, similarly, it does not contemplate eviction on fifteen days notice, or at all, if the manager believes that the tenant's income makes him ineligible when the actual facts are otherwise. Merely to insure that the tenant gets what he "bargains" for (if we may use that inapplicable word in this context), the lease may be, and

---

[16] 1. Management "may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last day of the term" (R. 12).

2. If management determines that a tenant's income exceeds the limits for eligible occupancy it "may terminate at the end of any calendar month by giving the Tenant not less than 30 days' prior notice in writing" (R. 15).

3. If a tenant is a member of an organization designated as subversive by the Attorney General of the United States he must vacate the premises "promptly" (R. 17).

4. If a tenant makes misrepresentations in his application or if he "fails to comply with any of the provisions of" the lease, it is "automatically terminated at the option of the management" and the tenant "waives all notice required by law" and management may "immediately re-enter said premises and dispossess the Tenant without legal notice or the institution of any legal proceedings whatsoever" (R. 16).

The host of provisions the tenant must comply with include, *inter alia*, duties: to pay rent when due; to pay for damages and excess consumption of gas, water and electricity; to use the premises only for a dwelling; to keep the premises clean; not to keep dogs; to follow rules and regulations; to submit an annual income statement; and to promptly notify management of any increase or decrease in family income or any change in family composition or assets (R. 13-14). There are numerous other such provisions (*ibid.*).

should be, read to require that management state a reason for a purported termination of the lease.[17]

In any event, the lease contains no clear waiver of the right to notice of the reasons for eviction. It should not lightly be presumed, from a document that is silent on the subject, that the constitutional rights of indigent public housing tenants have been waived. This is particularly true, considering the fact that the leases are prepared by government agencies who stand in an infinitely superior "bargaining position." Indeed, by definition, indigent public housing tenants have no "bargaining position" at all. They are offered public housing only because they have insufficient

---

[17] This Court may independently construe the lease in accordance with federal law. *Clearfield Trust Co.* v. *United States,* 318 U.S. 363; *United States* v. *Allegheny County,* 322 U.S. 174. The lease was entered into by the Housing Authority acting to carry out the policy of the federal housing laws, under a contract with the federal government and with federal funds. The lease in question is a contract with an intended beneficiary of the federal program. This was not a custom-tailored lease negotiated with specific reference to North Carolina law. Contrast: *United States* v. *Yazell,* 382 U.S. 341; and see *United States* v. *Helz,* 314 F.2d 301 (6th Cir. 1963). Such month to month leases are commonly used by almost every public housing agency in the country, though no federal law requires such short terms. There is, thus, a substantial federal interest in national uniformity in the treatment of the intended beneficiaries of the federal program in accordance with basic standards of decency and procedural fairness. This is not at all inconsistent with the policy of the federal act to vest in local agencies the "maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the [Federal] Authority), *with due consideration to accomplishing the objectives* of this chapter while effecting economies" (42 U.S.C. § 1401; emphasis supplied). The policy assumes a reservoir of federal control to accomplish the objective of the Act, e.g., furnishing housing to the needy. Interpretation of the lease as a federal instrument under the *Clearfield Trust* doctrine, would not require that federal rather than state law govern contracts made by local authorities with others. Contracts with beneficiaries of the program are plainly distinguishable from contracts between the local agencies and builders or suppliers, which ought to be governed by state law, consistent with the policy of using local law as a convenient local resource to accomplish the objectives of the program.

funds to obtain decent housing on the private market. It blinks reality to treat low-income public housing tenants as if they bargain with the government over the terms of their leases.

III.

Petitioner Was Entitled to an Administrative Hearing to Contest the Cancellation of Her Low-Income Housing Benefits.

Due process requires that petitioner be given some opportunity to be heard to offer proof to contest the Authority's action cancelling her low-income housing benefits. The right to a hearing has long been regarded as one of the fundamental rudiments of fair procedure necessary where the government acts against a citizen's vital interests. Hearings are an important protection against arbitrariness. They are customary in our law where the decision about how government will treat the citizen turns on issues of fact. The expectable ordinary controversies that may lead to public housing evictions need fair procedures for fact-finding. They might involve various claims of misbehavior by tenants affecting other tenants or the property. Tenants should have the right to have decisions on such issues based on evidence and not on rumor or fancy. For the indigent, eviction is a serious penalty. And, of course, hearings are all the more necessary where First Amendment claims are implicated, or there is a claim of race discrimination, or any similar constitutional claim.

The due process right to a fair administrative hearing has been sustained in a variety of contexts over the years.[18]

---

[18] The right to a hearing in criminal and civil litigation in the courts is, of course, basic in our Constitutional jurisprudence. *Re Oliver*, 333 U.S. 257, 273; *Coe* v. *Armour Fertilizer Works*, 237 U.S. 413.

The right to a hearing has been upheld where officials sought to deport aliens, *Japanese Immigrant Case* (*Yamataya* v. *Fisher*), 189 U.S. 86; *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 49-51; *Kwong Hai Chew* v. *Colding*, 344 U.S. 590; where a man claiming citizenship was excluded from the country, *Chin Yow* v. *United States*, 208 U.S. 8; where a board assessed taxes for street-paving, *Londoner* v. *Denver*, 210 U.S. 373, 386;[19] where a railroad was ordered to abolish a grade crossing, *Southern R. Co.* v. *Virginia*, 290 U.S. 190; where railway rates, *I.C.C.* v. *Louisville & N. R. Co.*, 227 U.S. 88, 91, 93, and livestock prices, *Morgan* v. *United States*, 304 U.S. 1,[20] were regulated; where a college professor was summarily discharged without a hearing for invoking the privilege against self-incrimination before a Senate committee, *Slochower* v. *Board of Higher Education*, 350 U.S. 551; where students in state colleges were expelled without hearings for alleged misconduct in anti-segregation demonstrations, *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930; *Knight* v. *State Board of Education*, 200 F.Supp. 174 (M.D. Tenn. 1961);[21] and where a bar committee refused, without a hearing, to certify an applicant's good character, *Willner* v. *Committee on Character & Fitness*, 373 U.S. 96. In *Greene* v. *McElroy*, 360 U.S. 474, the Court invalidated revocation of the security clearance of

---

[19] Contrast *Londoner, supra*, with *Bi-Metallic Inv. Co.* v. *State Board of Equalization*, 239 U.S. 441. The difference in results follows from application of the distinction between cases involving "adjudicative" facts and those involving "legislative" facts. 1 DAVIS, ADMINISTRATIVE LAW TREATISE, §7.04 (1958). The issues in eviction cases will almost invariably involve "adjudicative" facts determining whether tenants fall within an established rule.

[20] Cf. *Morgan* v. *United States*, 298 U.S. 468.

[21] See also *Woods* v. *Wright*, 334 F.2d 369 (5th Cir. 1964). Compare *Swan* v. *Board of Higher Education*, 319 F.2d 56, 58 (2d Cir. 1963), with *Steier* v. *New York State Educ. Com'r*, 271 F.2d 13 (2d Cir. 1959), *cert. denied*, 361 U.S. 966.

the private employee of a defense contractor, based on undisclosed adverse reports about the employee. Where the action without a fair hearing was not explicitly authorized by the President or Congress, the Court ruled it impermissible without deciding the constitutional issue. But the opinion has constitutional overtones: "Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process." 360 U.S. at 507.

When the poor deal with government welfare agencies they should receive no less protection than is accorded to meat packers, and railroads, and lawyers, and college students in their confrontations with government. As Professor Harry Jones has put it, this is "the task of the rule of law."[22] Addressing the issue, Professor Charles A. Reich has written, concerning public housing, and welfare programs generally:

> In a society where a significant portion of the population is dependent on social welfare, decisions about eligibility for benefits are among the most important that a government can make. By one set of values the granting of a license to broadcast over a television channel, or to build a hydroelectric project on a river, might seem of more far-reaching significance. But in a society that considers the individual as its basic unit

---

[22] Jones, *The Rule of Law and the Welfare State*, 58 Colum. L. Rev. 143, 156 (1958):

> "In the welfare state, the private citizen is forever encountering public officials of many kinds: regulators, dispensers of social services, managers of state-operated enterprises. It is the task of the rule of law to see to it that these multiplied and diverse encounters are as fair, as just, and as free from arbitrariness as are the familiar encounters of the right-asserting private citizen with the judicial officers of the traditional law."

> a decision affecting the life of a person or a family should not be taken by means that would be unfair for a television station or power company. Indeed, full adjudicatory procedures are far more appropriate in welfare cases than in most of the areas of administrative procedure.
>
> • • • • •
>
> At a minimum, there should be notice to beneficiaries of regulations and proposed adverse action, and fact finding should be carried on in a scrupulous fashion.
>
> • • • • •
>
> Procedures can develop gradually and pragmatically, but as welfare grows in importance in our society, it will be necessary to give increasing attention to the procedures by which welfare rights are granted or refused. Here the experience of lawyers can be of great assistance; whatever the outcome of particular decisions, adequate procedure gives a sense of fairness that is vital to community acceptance of a welfare program.[23]

In a concurring opinion, expressing the view that the designation of organizations as Communist without a hearing violated procedural due process, Mr. Justice Frankfurter stated the matters he thought properly considered in judging the right to a hearing; *Joint Anti-Fascist Refugee Com.* v. *McGrath*, 341 U.S. 123, 163:

> The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedures that were followed, the protection im-

[23] Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245, 1253 (1965).

plicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment.

Appraising the circumstances of Mrs. Thorpe's case against the tests mentioned by Mr. Justice Frankfurter, persuasively demonstrates her right to a hearing as a matter of fundamental fairness:

1. *"The precise nature of the interest that has been adversely affected."* Petitioner's interest (discussed *supra*, pp. 25-26) involves the difference between living in a low-cost, decent, sanitary and stable environment or being relegated to slums that "may indeed make living an almost insufferable burden." *Berman* v. *Parker*, 348 U.S. 26, 32. It has been said that deportation may result in the loss "of all that makes life worth living", *Ng Fung Ho* v. *White*, 259 U.S. 276, 284. Can any less be said about loss of the opportunity to raise one's children in a decent environment? As President Johnson has said, the dispossessed Negro poor "are another nation." [24]

2. *"[T]he manner in which this was done, the reason for doing it."* The eviction notice stated no reason for the action, and no reason was otherwise disclosed despite petitioner's repeated requests. This is sufficient commentary on the arbitrary manner in which she was treated.

3. *"[T]he available alternatives to the procedure that was followed."* The housing authority could have afforded

---

[24] Remarks of President Lyndon B. Johnson, at Howard University, Washington, D. C., June 4, 1965, "To Fulfill These Rights", p. 4:

> "But for the great majority of Negro Americans—the poor, the unemployed, the uprooted and the dispossessed—there is a much grimmer story. They still are another nation. Despite the court orders and the laws, despite the legislative victories and the speeches, for them the walls are rising and the gulf is widening."

Mrs. Thorpe a written statement of the grounds for cancelling her lease, and an opportunity to present proof on any issues of contested fact affecting her right to remain in the housing project. The Housing Authority of the City of Durham, has statutory power "to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information." Gen. Stats. of N.C., §157-9. The authority can "issue subpoenas requiring the attendance of witnesses or the production of books and papers and . . . issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance" *Ibid.* The authority is empowered to delegate its powers to conduct investigations or examinations, and to administer oaths and issue subpoenas, to committees, to counsel, and to officers or employees. *Ibid.* The authority has made no effort to show that a full trial type hearing to resolve factual disputes determinative of a tenant's right to remain in a project would be burdensome or impractical. Surely some traditional safeguards are needed lest tenants be deprived of their low income housing benefits on the basis of vicious and unfounded rumors about their personal lives or for any of a variety of invidious reasons. Petitioner's First Amendment claim should have been decided only after rigorous procedural safeguards to insure fair and reliable fact-finding.

4. "*[T]he protection implicit in the office of the functionary whose conduct is challenged.*" Housing authority managers and supervisory officials ordinarily have no training in constitutional law, are not directly responsive to an electorate, and are unlikely to be morally or intellectually superior to any other class of government ad-

ministrators. They have no special distinction which makes them the safe repositories of arbitrary power.

5. ["*T*]*he balance of hurt complained of and good accomplished.*" The injury threatened to Mrs. Thorpe has been discussed above. The Housing Authority's secrecy about its reasons for evicting her deprives the Court of any opportunity to appraise what good, if any, might be accomplished by evicting her. Denial of a hearing can plainly hide evil, but we are unable to perceive any useful public purpose that it might accomplish.

The courts below rejected the claimed right to a hearing, as they rejected the claimed right to notice, on the basis of the lease provisions. We have argued, above pp. 29-33, with respect to the right to notice, that it is unconstitutional for the agency to exact the waiver of a basic element of procedural fairness as part of the price of obtaining a low-income apartment. What we have said before, *supra*, pp. 29-33, applies with equal force to the right to a hearing. The petitioner's lease contains no clear and explicit waiver of a hearing. The Congress has not authorized local agencies to deny procedural fairness to these recipients of the national largesse. "Such [a decision] cannot be assumed by acquiescence or non-action." *Greene* v. *McElroy*, 360 U.S. 474, 507. A requirement that low-income tenants waive their rights to a hearing is an unconstitutional condition which the state-federal agency may not impose. *Sherbert* v. *Verner*, 374 U.S. 398.[25] As we have seen, arbitrary power in the hands of housing managers can strike at the heart of free speech (*Holt* v. *Richmond Redevelopment and Housing Authority*, Civil Action No. 4746, E.D. Va., September 7, 1966), and free religious expres-

[25] See also cases cited, *supra*, p. 29.

sion (*Tucker* v. *Texas*, 326 U.S. 517.) The Housing Authority of the City of Durham may not acquire arbitrary power over basic constitutional freedoms by contract, lease or otherwise. *Sherbert* v. *Verner, supra; Speiser* v. *Randall*, 357 U.S. 513.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
CHARLES H. JONES, JR.
MICHAEL MELTSNER
SHEILA RUSH JONES
10 Columbus Circle
New York, New York 10019

R. MICHAEL FRANK
1238A Carrollburg Place S.W.
Washington, D.C.

M. C. BURT
213½ West Main Street
Durham, North Carolina

Attorneys for Petitioner

Of Counsel:
MARTIN GARBUS
EDWARD V. SPARER
HOWARD THORKELSON

APPENDIX

Excerpts from the United States Housing Act of 1937

42 U.S.C. §1401 et seq.

§ 1401. Declaration of policy

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies. Sept. 1, 1937, c. 896, § 1, 50 Stat. 888; July 15, 1949, c. 338, Title III, § 307(a), 63 Stat. 429; Sept. 23, 1959, Pub.L. 86–372, Title V, § 501, 73 Stat. 679.

§ 1402. Definitions

When used in this chapter—

LOW-RENT HOUSING; ELIGIBILITY; CONTINUED OCCUPANCY

(1) The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of fam-

ilies of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing shall be available solely for families of low income. Except as otherwise provided in section 1421b of this title, income limits for occupancy and rents shall be fixed by the public housing agency and approved by the Administration after taking into consideration (A) the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and (B) the economic factors which affect the financial stability and solvency of the project.

(2) The term "families of low income" means families (including elderly and displaced families) who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term "families" includes families consisting of a single person in the case of elderly families and displaced families, and includes the remaining member of a tenant family. The term "elderly families" means families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old-age benefit under title II of the Social Security Act, or are under a disability as defined in section 423 of this Title, or are handicapped within the meaning of section 1701q of Title 12. The term "displaced families" means families displaced by urban renewal or other governmental action, or families whose present or former dwellings are situated in areas determined by the Small Business Administration, subsequent to April 1,

1965, to have been affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster. As amended Aug. 10, 1965, Pub.L. 89–117, Title I, §§103(b), 104, 79 Stat. 457.

SLUM

(3) The term "slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

SLUM CLEARANCE

(4) The term "slum clearance" means the demolition and removal of buildings from any slum area.

DEVELOPMENT; OFFICE SPACE FOR RENEWAL FUNCTIONS

(5) The term "development" means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-rent housing project. The term "development cost" shall comprise the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges, but not beyond the point of physical completion), and in otherwise carrying out the development of such project. Construction activity in connection with a low-rent housing project may be confined to the reconstruction, remodeling, or repair of existing buildings. In cases where the public housing agency is also the local public agency for the purposes of sections 1450–1452, 1453–1455, 1456–1460, and 1462 of this title, or in cases where the public housing agency and the local

public agency for purposes of such sections operate under a combined central administrative office staff, an administration building included in a low-rent housing project to provide central administrative office facilities may also include sufficient facilities for the administration of the functions of such local public agency, and in such case, the Administration shall require that an economic rent shall be charged for the facilities in such building which are used for the administration of the functions of such local public agency and shall be paid from funds derived from sources other than the low-rent housing projects of such public housing agency.

ADMINISTRATION

(6) The term "administration" means any or all undertakings necessary for management, operation, maintenance, or financing, in connection with a low-rent-housing or slum-clearance project, subsequent to physical completion.

FEDERAL PROJECT

(7) The term "Federal project" means any project owned or administered by the Administration.

* * * * *

PUBLIC HOUSING AGENCY

(11) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (excluding the Administration), which is authorized to engage in the development or administration of low-rent housing or slum clearance. The Administration shall enter into contracts for financial assistance with a State or State agency where such State or State agency

makes application for such assistance for an eligible project which, under the applicable laws of the State, is to be developed and administered by such State or State agency.

STATE

(12) The term "State" includes the States of the Union, the District of Columbia, and the Territories, dependencies, and possessions of the United States.

PUBLIC HOUSING ADMINISTRATION

(13) The term "Administration" means the Public Housing Administration.

* * * * *

§ 1404a. Public Housing Administration; right to sue; employment of personnel; delegation of functions; rules and regulations; expenses

The Public Housing Administration shall sue and be sued only with respect to its functions under this chapter, and sections 1501–1505 of this title. The Public Housing Commissioner may appoint such officers and employees as he may find necessary, which appointments, notwithstanding the provisions of any other law, after August 10, 1948, shall be made under this section, and shall be subject to the civil-service laws and the Classification Act of 1949, as amended; delegate any of his functions and powers to such officers, agents, or employees of the Public Housing Administration as he may designate; and make such rules and regulations as he may find necessary to carry out his functions, powers, and duties. Funds made available for carrying out the functions, powers, and duties of the Administration (including appropriations therefor, which are authorized) shall be available, in such amounts as may

from year to year be authorized by the Congress, for the administrative expenses of the Administration. Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in limitation hereof, the Public Housing Administration, or any State or local public agency administering a low-rent housing project assisted pursuant to this chapter or sections 1501–1505 of this title, shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered, and, in determining net income for the purposes of tenant eligibility with respect to low-rent housing projects assisted pursuant to this chapter and sections 1501–1505 of this title, the Public Housing Administration is authorized, where it finds such action equitable and in the public interest, to exclude amounts or portions thereof paid by the United States Government for disability or death occurring in connection with military service. Aug. 10, 1948, c. 832, Title V, § 502(b), 62 Stat. 1284; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

§ 1410. Annual contributions in assistance of low rentals—Authorization

* * * * *

MAXIMUM INCOME LIMITS; ADMISSION POLICIES

(g) Every contract for annual contributions for any low-rent housing project shall provide that—

(1) the maximum income limits fixed by the public housing agency shall be subject to the prior approval of the Administration and the Administration may require the agency to review and revise such limits if the Administra-

tion determines that changed conditions in the locality make such revisions necessary in achieving the purposes of the chapter;

(2) the public housing agency shall adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of displaced families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran, and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income: *Provided,* That in establishing such admission policies the public housing agency shall accord to families of low income such priority over single persons as it determines to be necessary to avoid undue hardship; and

(3) the public housing agency shall determine, and so certify to the Administration, that each family in the project was admitted in accordance with duly adopted regulations and approved income limits; and the public housing agency shall make periodic reexaminations of the incomes of families living in the project and shall require any family whose income has increased beyond the approved maximum income limits for continued occupancy to move from the project unless the public housing agency determines that, due to special circumstances, the family is unable to find decent, safe and sanitary housing within its financial reach although making every reasonable effort to do so, in which event such family may be permitted to remain for the duration of such a situation if it pays an increased rent consistent with such family's increased income.

* * * * *

Excerpts from the United States Housing Act of 1937

§ 1415. Preservation of low rents

In order to insure that the low-rent character of housing projects will be preserved, and that the other purposes of this chapter will be achieved, it is provided that—

* * * * *

LOCAL RESPONSIBILITIES AND DETERMINATIONS

(7) In recognition that there should be local determination of the need for low-rent housing to meet needs not being adequately met by private enterprise—

(a) The Administration shall not make any contract with a public housing agency for preliminary loans (all of which shall be repaid out of any moneys which become available to such agency for the development of the projects involved) for surveys and planning in respect to any low-rent housing projects initiated after March 1, 1949, (i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loan; and (ii) unless the public housing agency has demonstrated to the satisfaction of the Administration that there is a need for such low-rent housing which is not being met by private enterprise; and

(b) The Administration shall not make any contract for loans (other than preliminary loans) or for annual contributions pursuant to this chapter with respect to any low-rent housing project initiated after March 1, 1949, (i) unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Administration pursuant to this chapter; (ii) unless the public housing agency has demon-

strated to the satisfaction of the Administration that a gap of at least 20 per centum (except in the case of a displaced family or an elderly family) has been left between the upper rental limits for admission to the proposed low-rent housing and the lowest rents at which private enterprise unaided by public subsidy is providing (through new construction and available existing structures) a substantial supply of decent, safe, and sanitary housing toward meeting the need of an adequate volume thereof; and (iii) unless the public housing agency has demonstrated to the satisfaction of the Administration that there is a feasible method for the temporary relocation of the individuals and families displaced from the project site, and that there are or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of such individuals and families, decent, safe, and sanitary dwellings equal in number to the number of and available to such individuals and families and reasonably accessible to their places of employment.

Excerpts from the North Carolina "Housing Authorities Law"

Gen. Stats. of North Carolina, § 157-1 et seq.

§ 157-2. Finding and declaration of necessity

It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the State and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative deter-

mination to be in the public interest. (1935, c. 456, s. 2; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2.)

§ 157-4. Notice, hearing and creation of authority; cancellation of certificate of incorporation

Any twenty-five residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said sur-

rounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;

(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the

date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article;

(3) The term of office of each of the commissioners;

(4) The name which is proposed for the corporation; and

(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

Excerpts from the North Carolina "Housing Authority Law"

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no indebtedness has been incurred or property acquired by said housing authority. (1935, c. 456, s. 4; 1943, c. 636, s. 7; 1961, c. 987.)

§ 157-9. Powers of authority

An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

Excerpts from the North Carolina "Housing Authority Law"

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality

of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its

revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist

which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this article or in any other provision of law an authority may include in any contract let in connection with a

project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project. (1935, c. 456, s. 9; 1939, c. 150.)

§ 157-23. Contracts with federal government

In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this article to undertake. (1935, c. 456, s. 23.)

§ 157-29. Rentals and tenant selection

It is hereby declared to be the policy of this State that each housing authority shall manage and operate its hous-

ing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient

(1) To pay, as the same become due, the principal and interest on the bonds of the authority;

(2) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and

(3) To create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve.

In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which necessary (as determined by the

housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding;

(2) It may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons;

(3) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and

(4) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependdents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Excerpts from the North Carolina "Housing Authority Law"

Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section. (1939, c. 150.)

North Carolina Statutes Re Summary Ejectment

Gen. Stats. of North Carolina, § 42-26 et seq.

§ 42-26. Tenant holding over may be dispossessed in certain cases

Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

(1) When a tenant in possession of real estate holds over after his term has expired.

(2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

(3) When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated. (4 Geo. II, c. 28; 1868-9, c. 156, s. 19; Code, ss. 1766, 1777; 1905, cc. 297, 299, 820; Rev., s. 2001; C. S., s. 2365.)

§ 42-28. Summons issued by justice on verified complaint

When the lessor or his assigns, or his or their agent or attorney, makes oath in writing, before any justice of the

peace of the county in which the demised premises are situated, stating such facts as constitute one of the cases described in § 42-26 and §42-27, and describing the premises and asking to be put in possession thereof, the justice shall issue a summons reciting the substance of the oath, and requiring the defendant to appear before him or some other justice of the county, at a certain place and time (not to exceed five days from the issuing of the summons, without the consent of the plaintiff or his agent or attorney), to answer the complaint. The plaintiff or his agent or attorney may in his oath claim rent in arrear, and damage for the occupation of the premises since the cessation of the estate of the lessee: Provided, the sum claimed shall not exceed two hundred dollars; but if he omits to make such claim, he shall not be thereby prejudiced in any other action for their recovery. (1868-9, c. 156, s. 20; 1869-70, c. 212; Code, s. 1767; Rev., s. 2002; C. S., s. 2367.)

§ 42-29. Service of summons

The officer receiving such summons shall immediately serve it by the delivery of a copy to the defendant or by leaving a copy at his usual or last place of residence, with some adult person, if any such be found there; or, if the defendant has no usual place of residence in the county and cannot be found therein, by fixing a copy on some conspicuous part of the premises claimed. (1868-9, c. 156, s. 21; Code, s. 1768; Rev., s. 2003; C. S., s. 2368.)

§ 42-30. Judgment by default or confession

The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if the defendant fails to appear, or admits the allegations of the complaint, the justice shall give judgment that the defendant be removed from, and the plaintiff be put

in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding two hundred dollars, be claimed in the oath of the plaintiff as due and unpaid, the justice shall inquire thereof, and give judgment as he may find the fact to be. (1868-9, c. 156, s. 22; Code, s. 1769; Rev., s. 2004; C. S., s. 2369.)

§ 42-31. Trial by justice; jury trial; judgment; execution

If the defendant by his answer denies any material allegation in the oath of the plaintiff, the justice shall hear the evidence and give judgment as he shall find the facts to be. If either party demands a trial by jury, it shall be granted under the rules prescribed by law for other trials by jury before a justice; and if the jury finds that the allegation in the plaintiff's oath, which entitles him to be put in possession, is true, the justice shall give judgment that the defendant be removed from and the plaintiff put in possession of the demised premises, and also for such rent and damages as shall have been assessed by the jury, and for costs; and shall issue his execution to carry the judgment into effect. (1868-9, c. 156, s. 23; Code, s. 1770; Rev., s. 2005; C. S., s. 2370.)

§ 42-32. Damages assessed to trial

On appeal to the superior court, the jury trying issues joined shall assess the damages of the plaintiff for the detention of his possession to the time of the trial in that court; and, if the jury finds that the detention was wrongful and that the appeal was without merit and taken for the purpose of delay, the plaintiff, in addition to any other damages allowed, shall be entitled to double the amount of rent in arrears, or which may have accrued, to the time

of trial in the superior court. Judgment for the rent in arrears and for the damages assessed may, on motion, be rendered against the sureties to the appeal. (1868-9, c. 156, s. 28; Code, s. 1775; Rev., s. 2006; C. S., s. 2371; 1945, c. 796.)

§ 42-34. Undertaking on appeal; when to be increased

Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice; upon appeal to the superior court either plaintiff or defendant may demand that the same shall be tried at the first term of said court after said appeal is docketed in said court, and said trial shall have precedence in the trial of all other cases, except in cases of exceptions to homesteads: Provided, that said appeal shall have been docketed at least ten days prior to the convening of said court: Provided further, that in the event the trial before the justice of the peace takes place at least fifteen days prior to the convening of said superior court, said appeal shall, upon the demand of either plaintiff or defendant, be docketed in time to be tried at said first term of said superior court after said trial before the justice of the peace: Provided, further, that the presiding judge, in his discretion, may make up for trial in advance any pending case in which the rights of the parties or the public require it; but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages

for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to cover rents and damages for such period as to the court may seem proper, and if such tenant fails to show proper cause and does not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed. (1868-9, c. 156, s. 25; 1883, c. 316; Code, s. 1772; Rev., s. 2008; C. S., s. 2373; 1921, c. 90; Ex. Sess. 1921, c. 17; 1933, c. 154; 1937, c. 294; 1949, c. 1159.)

INDEX

	Page
Question Presented	1
Statement	2
Argument:	
Introduction	4
I. The lease shown in the record is not an unconstitutional method of prescribing and defining the tenant's right of occupancy	6
II. The Housing Authority's decision not to renew the Petitioner's lease by giving her notice prescribed by the terms of the lease and without assigning to her reasons therefor and without a preliminary hearing was not a denial of due process	10
III. The proceedings in the State Court instituted by the Housing Authority did not deny to the Petitioner any constitutional right	17
Conclusion	21
Appendix:	
State of North Carolina Statutory Provisions	22

TABLE OF CASES

Barsky v. Board of Regents, 347 U.S. 442 ..... 9, 16
Beilan v. Board of Public Education, 357 U.S. 399 16
Bell v. Maryland, 378 U.S. 226 9
Brand v. Chicago Housing Authority (CCA 7), 120 F. 2d 786 (1941) 9, 10, 14, 15
Cafeteria and Rest. Workers Union v. McElroy, 367 U.S. 886 (1961) 12
Chicago Housing Authority v. Blackman, 4 Ill. 2d 319, 122 NE 2d 522 (1954) 14
Chicago Housing Authority v. Ivory, 341 Ill. App. 282, 93 NE 2d 386 (1950) 9, 14, 15

Page

Chin Yow v. United States, 208 U.S. 8 18
Columbus Metropolitan Housing Authority v. Simpson, 85 Ohio App. 73, 85 NE 2d 560 (1949) 9, 15
Detroit Housing Commission v. Lewis, 226 F. 2d 180 (6th Cir. 1955) 14
Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961) cert. denied, 368 U.S. 930 17
Erie R. Co. v. Tompkins, 304 U.S. 64 9
Flemming v. Nestor, 363 U.S. 603 8
Holt v. Richmond Redevelopment and Housing Authority, Civil Action No. 4746, E.D. Va., Sept. 7, 1966 14
Housing Authority of Los Angeles v. Codova, 130 Cal. App. 2d Supp. 883, 279 P. 2d 215 (1955) 15
Housing Authority v. Thorpe, 267 N.C. 431 (1966) 15
Knight v. State Board of Education, 200 F. Supp. 174 (M.D. Tenn. 1961) 17
Kutcher v. Housing Authority of Newark, 20 N.J. 181, 119 A.2d 1 (1955) 15
Kwong Hai Chew v. Colding, 344 U.S. 590 16
Lawson v. Housing Authority of Milwaukee, 270 Wisc. 269, 70 N.W. 2d 605 (1955) 15
Lynch v. United States, 292 U.S. 571 8
Marsh v. Alabama, 326 U.S. 501 .....14, 20
Morgan v. United States, 304 U.S. 1 16
Ng Fung Ho v. White, 259 U.S. 276 16
Pittsburgh Housing Authority v. Turner, 201 Pa. Super. 62, 191 A.2d 869 (1963) 9, 15
Rudder v. United States, 226 F. 2d 51 (D.C. Cir. 1955) 15
Schware v. Board of Bar Examiners, 353 U.S. 232 ... 15
Shelley v. Kraemer, 334 U.S. 1 20
Shelton v. Tucker, 364 U.S. 479 16
Sherbert v. Verner, 374 U.S. 398 16
Slochower v. Board of Education of New York City, 350 U.S. 551 16
Snowden v. Hughes, 321 U.S. 1 18
Speiser v. Randall, 357 U.S. 513 16
Steier v. New York State Education Commissioner, (CCA 2d) 271 F. 2d 13 (1959) 17
Torcaso v. Watkins, 367 U.S. 488 16
Tucker v. Texas, 326 U.S. 517 9

Page

Walton v. City of Phoenix, 69 Ariz. 26, 208 P. 2d 309 (1949) 9, 15
Wieman v. Updegraff, 344 U.S. 183 16
Willner v. Committee on Character and Fitness, 373 U.S. 96 15
Woods v. Wright, 334 F. 2d 369 (5th Cir. 1964) 17

STATUTES AND REGULATIONS

Executive Order No. 11063, 27 Fed. Reg. 11527 (1962) 7
Federal Acts on National Housing, Title 50 U.S.C.A. War Appendix 10
Housing Act of 1937, as amended, 42 U.S.C. § 1401, et seq. 6, 7, 9
Housing Act of 1961, 42 U.S.C.A. § 1410 g 6, 13
Local Housing Authority Management Handbook, May, 1963 11
North Carolina Gen. Stat. 157-29 6
North Carolina Housing Authority Law, N.C. G.S. 157-1, et seq. 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE, *Petitioner*

v.

HOUSING AUTHORITY OF THE CITY OF DURHAM

On Writ of Certiorari to the Supreme Court of North Carolina

BRIEF FOR HOUSING AUTHORITY OF THE CITY OF DURHAM

QUESTION PRESENTED

Did the Supreme Court of North Carolina violate the Constitution of the United States in sustaining the eviction judgment of the Superior Court of the State in an action brought by the Housing Authority against

the Petitioner, an occupant of one of its dwelling units, in the absence of any finding that there was an unconstitutional requirement imposed as a condition of the renewal of Petitioner's lease?

STATEMENT

The Petitioner and the Housing Authority of the City of Durham, on the 11th day of November, 1964, entered into a written lease, leasing to the Petitioner, Thorpe, an apartment in a building owned by the Housing Authority of the City of Durham for a term beginning November 11, 1964, and terminating at Midnight November 30, 1964 (R. 11). The lease provided that it would automatically be renewed for successive terms of one month each and that the Housing Authority could prevent such automatic renewal by giving to the tenant notice, in writing, of such intention fifteen days prior to the last day of the term, and that the tenant could prevent the automatic renewal by giving a like notice to the Housing Authority. There was no provision in the lease requiring a reason to be assigned for a decision not to renew the lease by either party. On the 12th day of August, 1965, the Housing Authority gave written notice to the Petitioner that the lease would not be renewed after the term ending August 31, 1965 (R. 18). After the term ended on August 31, 1965, the Petitioner, Thorpe, refused to vacate the premises and continued to occupy same (R. 21).

The Housing Authority brought an action in Summary Ejectment before a Justice of the Peace in Durham County (R. 1); and after a hearing before the Justice of the Peace, participated in by the Petitioner,

Thorpe, and her counsel, Judgment was entered by the Court requiring the defendant, Thorpe, to vacate the premises. The Petitioner then gave notice of appeal to the Superior Court of North Carolina (R. 4).

Upon the case coming on for hearing in the Superior Court of Durham County, North Carolina, both parties waived trial by jury and stipulated that the Judge presiding should find the facts upon the stipulations made and affidavits filed and render thereon judgment (R. 6). In her affidavit filed in this action, the Petitioner, Thorpe, asserted that the reason for her eviction was her efforts to organize the tenants of McDougald Terrace, the housing project belonging to the Housing Authority (R. 8). It was stipulated by both parties that it was alleged by the Petitioner, Thorpe, that the reason she was being evicted was due to her participation in the organization of the Parent's Club in the McDougald Terrace Project (R. 6).

The Superior Court then found as fact that the Housing Authority was the owner of the property occupied by the Petitioner, Thorpe; that the lease was duly executed; that the Petitioner, Thorpe, duly received a written notice from the Housing Authority terminating a lease effective August 31, 1965; that the Petitioner, Thorpe, failed to vacate the premises after the 31st day of August, 1965; and that the organizational activity of the Petitioner was not the reason for giving her notice that the lease would not be renewed (R. 19).

The Petitioner then appealed to the Supreme Court of North Carolina, and there the judgment of the Superior Court was affirmed.

ARGUMENT

INTRODUCTION

This case, on its facts, is not a test of the propositions asserted by the Petitioner. Here, the Housing Authority of the City of Durham, a corporation organized and operating under the laws of the State of North Carolina, acting neither as the agent of the State nor of the Federal Government, instituted an action in the Courts of the State of North Carolina to evict a tenant occupying one of the dwelling units in a housing project owned by the Housing Authority. This tenant continued to occupy these premises after the end of the term of her lease. The tenant contends she was denied due process of law because the Courts of North Carolina did not require the Housing Authority, as a condition to obtaining judgment of eviction, to show that it had both notified the tenant of specific reasons for failing to renew her lease and given her an administrative hearing on the question of the renewal of her lease. The case arises in the context of a specific finding of fact by the Court that Petitioner was not evicted in connection with any exercise on her part of First Amendment rights to freedom of association. The Housing Authority was under no statutory or constitutional compulsion to renew the Petitioner's lease after it expired by its own terms; the absence of an assigned and expressed reason for its unwillingness to renew the lease did not give rise to any statutory or constitutional right of occupancy by the Petitioner. In resorting to the State Courts in an action of ejectment, the Housing Authority did not act as a governmental unit and did not exert any powers or privileges in excess of those vested in private proprietors.

Assuming that the Petitioner did not have a constitutional right to continue occupancy of the dwelling space after the expiration of the term of her lease, on this record it cannot be argued that additional procedural safeguards are required to insure that some other constitutional right she may have had not be denied by indirection. On this record, it cannot be assumed that the Courts of the State of North Carolina would permit the exclusion of this Petitioner or any other prospective tenant for the purpose of taking from her some right provided by the Constitution.

The Housing Authority contends that there is no constitutional prohibition to the use of lease and the normal legal concepts relating to landlord and tenant in management of its housing projects, absent, at least, the positive showing that there is some act by the Housing Authority pursuant to a purpose to deny a tenant some constitutional right, continued occupancy of the dwelling unit not being a constitutional right. Secondly, the Housing Authority, acting in its proprietary capacity, had no constitutional duty to justify to this tenant its decision not to renew her lease; and, in abiding by the terms of the lease, did not act arbitrarily. Further, the existing procedures in the State Courts are sufficient to enable a tenant or a prospective tenant to assert any alleged violation of constitutional rights and that in this case, no violation of this Petitioner's constitutional rights has been shown.

I.

The Lease Shown in the Record Is Not an Unconstitutional Method of Prescribing and Defining the Tenant's Right of Occupancy

In the management of its low-rent housing projects, the Housing Authority has, in this case, and presumably in all cases, regulated occupancy by using the legal devices and concepts normally involved in and arising from the landlord-tenant relationship. Both the United States Housing Act of 1937, as amended, and the North Carolina "Housing Authority Law" contemplated and, in fact, require that this be done. The State Statute says, in several places, that the Housing Authority may "rent or lease the dwelling accommodations".[1] Words appropriate to these concepts are also contained in the Federal Statute. Neither Statute undertook to set out a form for such lease nor to prescribe the length of any term, but did adopt eligibility criteria for prospective tenants and for continued occupancy.[2]

The statutory and Federal administrative eligibility requirements for prospective tenants, while emphasizing greater local responsibility by the Local Housing

---

[1] See N.C. G.S. 157-29. The decision of the Supreme Court of North Carolina in this case is authority for this proposition.

[2] Housing Act of 1961, Section 10(g) provides in part: "(1) The maximum income limits fixed the Public Housing Agency shall be subject to the prior approval of the Authority (PHA) and the Authority may require the Agency to review and revise such limits if the Authority determines that changed conditions in the locality make such revisions necessary in achieving the purpose of the Act. (2) The Public Housing Agency shall adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of those displaced by Urban Renewal or other governmental action, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran, and to the applicant's age and disability, housing conditions, urgency of housing need, and sources of income . . ."

Authorities, seem primarily designed to limit the tenants to low-income families who are not able to find decent housing within their means elsewhere and do not, certainly, require that every eligible family be accepted as a tenant. The annual contributions contract between the Local Housing Authority and the Federal Housing Assistance Administration, in the form which we believe to be generally applicable in the nation, provides that a Local Authority shall not permit any family to occupy a dwelling unit in any project except pursuant to a written lease, which lease shall contain all relevant provisions necessary to meet the requirements of the Housing Act of 1937, as amended, and the annual contributions contract. The Local Housing Authority Management Handbook published by Public Housing Administration (now Department of Housing and Urban Development) states that: "Whenever a family is admitted to occupancy in a low-rent project there is established a landlord-tenant relationship with contractual obligations to be fulfilled by both parties."[3] Further, Executive Order No. 11063

[3] Part IV, Section 1, Paragraph 6a. The whole sub-paragraph reads as follows: "Whenever a family is admitted to occupancy in a low-rent project there is established a landlord-tenant relationship with contractual obligations to be fulfilled by both parties. These obligations include many of those in standard landlord-tenant leases, such as the provision by the landlord of designated housing space and utilities and the payment of rent by the tenant. But in low-rent public housing there are also the following special obligations of a tenant to be reflected in the lease: (1) Furnish the Local Authority, upon request, with information necessary to determine eligibility for continued occupancy, the appropriate rent and dwelling size required. (2) Pay an increased rent when appropriate for its redetermined income or family composition. (3) Transfer to a unit of appropriate size (at such time as the Local Authority may designate) when a change in family composition warrants a different size dwelling. (4) Vacate if the family becomes overincome or becomes subject to removal through violation of any obligation of tenancy."

of November 20, 1962, prohibited discrimination because of race, color, creed or national origin in the leasing of such dwelling units. This lease is a valid contract, though entered into by a quasi-municipal corporation and an individual. *Lynch* v. *United States*, 292 U.S. 571.

Using the lease device, a normal landlord and tenant instrument, tends to prevent the segregation of the tenants in this project from the society in which they live. In *Flemming* v. *Nestor*, 363 U.S. 603, both Justice Black and Justice Douglas quote, with approval, a statement made by Senator George when the Social Security Act was passed: "It comports better than any substitute we have discovered with the American concept that free men want to earn their security and not ask for doles—that what is due as a matter of earned right is far better than a gratuity. . . ." And, so, here the Federal Government has not provided institutions in which all indigents may be inmates, but has granted financial assistance to quasi-municipal corporations organized under state law for the purpose of injecting into the housing rental market a substantial number of decent, low-rent dwelling units.

This gives the Housing Authority no governmental authority with respect to its tenants and no authority greater than that possessed by any other landlord. The interpretation and enforcement of the lease is a matter for the Courts. There is no Federal administrative, statutory, or constitutional requirement that the term of such lease be for the duration of the lifetime of the tenant or for the duration of his eligibility, there being no guarantee that all members of the eligible class shall have low-rent housing within a housing authority

project. There is no showing in this case that this lease as construed by the Courts of North Carolina with reference to its termination date did not meet the requirements of the Housing Act of 1937, as amended, nor of the annual contributions contract between the Housing Authority and the Federal Housing Assistance Administration. Here, statutory eligibility did not give rise to a right of occupancy; such right existed only by virtue of the lease agreement.

The State Court has held that the lease was valid and that its provisions as to termination did not violate either the North Carolina Housing Authorities Law nor the North Carolina eviction statutes. This was a North Carolina contract, and the Court below said: "This lease was terminated in accordance with its express provisions at Midnight 31 August 1965." *Erie R. Co.* v. *Tompkins,* 304 U.S. 64; *Tucker* v. *Texas,* 326 U.S. 517; *Bell* v. *Maryland,* 378 U.S. 226; *Barsky* v. *Board of Regents,* 347 U.S. 442.

Similar leases have been generally sustained by the Courts. *Walton* v. *City of Phoenix,* 69 Ariz. 26, 208 P. 2d 309 (1949), *Chicago Housing Authority* v. *Ivory,* 341 Ill. App. 282, 93 NE 2d 386 (1950), *Brand* v. *Chicago Housing Authority,* (CCA 7) 120 F. 2d 786 (1941), *Pittsburgh Housing Authority* v. *Turner,* 201 Pa. Super. 62, 191 A. 2d 869 (1963), *Columbus Metropolitan Housing Authority* v. *Simpson,* 85 Ohio App. 73, 85 NE 2d 560 (1949) are all in accord with the decision of the North Carolina Supreme Court in this case and are, on the facts presented, directly in point.[4]

---

[4] In *Walton* v. *City of Phoenix,* (69 Ariz. 26, 208 P.2d 309 (1949)), Undall, Justice, said in delivering opinion of Court: "It would seem to be defendants contention that these state statutes (eviction statutes) have no application to other than private land-

II.

The Housing Authority's Decision Not to Renew the Petitioner's Lease by Giving Her Notice Prescribed by the Terms of the Lease and Without Assigning to Her Reasons Therefor and Without a Preliminary Hearing was not a denial of Due Process

The Petitioner apparently wanted the Housing Authority to assign to her a specific reason for its decision not to renew her lease. The reasoning must have been that by attacking the assigned reason, she would either cause the Housing Authority to change its mind or cause her lease to be renewed or her occupancy continued without a lease by the Courts whether the Hous-

---

lords and that insofar as the plaintiff is concerned the whole matter is governed and controlled by the United States Housing Act of 1937 as amended. Defendants, however, fail to direct our attention to any specific provisions of the Act which support this theory. As a matter of fact, a reading of the entire act, with its amendments, as well as the related Federal Acts on National Housing, Title 50 U.S.C.A. War Appendix, leads one irresistibly to the opposite conclusion." In *Brand* v. *Chicago Housing Authority*, the Court said: "Any property right acquired by the plaintiffs was circumscribed by the terms and conditions upon which it was founded. True, as tenants, they acquired the right of possession, but this right was limited by the terms of the lease by which such right was obtained. By express provision thereof, either party was entitled to cancellation on fifteen days' notice to the other. It is our opinion that this provision with reference to the termination of the tenancy is valid and binding upon the plaintiffs in the same manner as though the lessor had been a private person rather that a Governmental Agency. . . . The fact that the Government selected plaintiffs as the object of such beneficence does not preclude it from determining at a later time that the purpose of the Act will be better served by the selection of some other family of the same or lower income class. To hold, as plaintiff would have us do, that the mere selection of a tenant carries with it a continuing right of tenure irrespective of the terms and conditions upon which the tenancy was founded, would not only contravene the purpose and policy of the Act, but would come near to destroying it."

ing Authority agreed or not. She contends that the United States Constitution places the burden on the Housing Authority to set up a "reason" for her to shoot at. Further, she also appears to contend that the reason can be attacked either because it denies her some constitutionally protected privilege such as the right of assembly under the First Amendment or that it is just not sufficient. In following the provisions of the lease and the published directives of the Federal Public Housing Administration[5] the local Housing Authority did not act arbitrarily.

We respectfully submit that there is no constitutional requirement that the reason for the Housing Authority's decision be sound, wise, or judicious, or one that would satisfy the Petitioner or any other landlord or agency. In other words, the decision not to enter into a lease with this Petitioner does not have constitutional connotations unless it is for the purpose of or results in the denial to her of some constitutional right such as the right of assembly. This is because the petitioner does not have a constitutional right to have a lease or to have a renewal of her lease after the expiration thereof and because in making such decisions, the Housing Authority is not acting as a government even though some public funds are involved in the support

---

[5] Local Housing Authority Management Handbook, Part IV, Sec. 1, Par. 6d(1): It is recommended that each Local Authorities' lease "Be drawn on a month-to-month basis whenever possible. This should permit any necessary evictions to be accomplished with a minimum of delay and expense upon the giving of a statutory Notice to Quit without stating reasons for such notice."

of its operation.[6] It has no authority over its tenants or prospective tenants except those that arise out of the terms and provisions of the lease. Under the applicable statutes and regulations it does have authority to refuse to enter into leases with certain members of the class of persons eligible and to enter into leases with others within that class. The applicable statutes do not require the Housing Authority to enter into a lease with an eligible Richard Roe even though there

---

[6] In *Cafeteria and Rest. Workers Union* v. *McElroy*, the Court said: "As these and other cases make clear, consideration of what procedures due process may require under any given set of circumstances must begin with the determination of the precise nature of the Government function involved as well as of the private interest that has been affected by Governmental action. Where it has been possible to characterize that private interest (perhaps an oversimplification) as a mere privilege subject to the Executives plenary power, it has traditionally been held that notice and hearing are not constitutionally required. . . .

"What then was the private interest affected by Admiral Tyree's action in the present case? It most assuredly was not the right to follow a chosen trade or profession. Rachel Brawner remained entirely free to obtain employment as a short-order cook or to get any other job, either with M & M or with any other employer. All that was denied her was the opportunity to work at one isolated and specific military installation.

"Moreover, the governmental function operating here was not the power to regulate or license, as lawmaker, an entire trade or profession or to control an entire branch of private business, but rather, as proprietor, to manage the internal operation of an important Federal military establishment.

"Thus, the nature both of the private interest . . . and the governmental power which has been exercised makes this case quite different from that of the lawyer in *Schwire*, supra, the physician in *Dent*, supra, and the cook in *Raich*, supra. . . .

"We may assume that Rachel Brawner could not constitutionally have been excluded . . . if the announced grounds for her exclusion had been patently arbitrary or discriminatory—that she could not have been kept out because she was a Democrat or a Methodist."

are vacant dwelling units in its properties, nor to assign a reason why it does enter into a lease with eligible John Doe and refuses to do so with Richard Roe. These are matters within the managerial and proprietory responsibilities of the Housing Authority. If it appeared as a fact that the Housing Authority did not select Richard Roe because he was a Methodist or did lease to John Doe because he was a Lumbee Indian, constitutional overtones could be heard. As the Senate Report accompanying the Housing Act of 1961 states: "Section 206 would create greater flexibility in the public housing program by requiring greater responsibility for administering the program at the local level. Existing law contains very detailed and complicated orders of preferences and eligibility to be applied among the low-income families. It is impossible to establish rigid nationwide orders of this kind which will meet all local circumstances. Local Housing Authorities have had many years of experience under these Federal requirements and should be relied upon to be competent and fair; and there is no question that they are in a much better position than the Federal Government to ascertain the myriad factors that may be involved in a particular situation and to determine their proper weight." It is submitted that the Constitution is not more restrictive than the Statute.

Nor is a hearing by the Housing Authority or notice of a specific reason procedural safeguards which should be imposed by this Court to protect the Petitioner from the invasion of some constitutional right other than her alleged right of occupancy of the Housing Authority's property. The Housing Authority having no powers greater than those of other proprietors, the procedures of the Court supply such safeguards.

The cases cited in Petitioner's brief support this proposition. See *Detroit Housing Commission* v. *Lewis,* 226 F. 2d 180 (6th Cir. 1955), and *Holt* v. *Richmond Redevelopment and Housing Authority,* Civil Action No. 4746, E.D. Va. Sept. 7, 1966. This Court has not required this in other cases. In *Marsh* v. *Alabama,* 326 U.S. 501, for example, there seems to be no requirement that every stranger in the company town be given a hearing as a constitutional safeguard before ordering him out. The possibility that he may turn out to be a Baptist missionary does not give rise to such a constitutional requirement. If it appears as a fact that his presence was pursuant to some constitutional right, then he could not be penalized by state law.

Cases cited in Petitioner's brief and in this brief illustrate the point. In *Chicago Housing Authority* v. *Blackman,* 4 Ill. 2d 319, 122 N.E. 2d 522 (1954), the Housing Authority notified the tenant that it was terminating the lease because of the tenant's failure and refusal to subscribe to a Loyalty Oath required by Illinois statute. The Court held that this was an invalid termination even though the Housing Authority could have terminated the tenancy upon fifteen (15) days' written notice without giving a reason. In *Chicago Housing Authority* v. *Ivory,* 341 Ill. App. 282, 93 N.E. 2d 386 (1950) and in *Brand* v. *Chicago Housing Authority,* (CCA 7), 120 F. 2d 786 (1941), it was held that the Housing Authority could terminate a month-to-month tenancy after giving due notice of termination without assigning any reason other than that the lease had terminated under its terms. In *Holt* v. *Richmond Housing Authority,* (C.A. No. 4746 E.D. Va. (1966)), the Court made the same distinction, there finding as a fact that the tenant was given notice of

termination because he was president of the Civic Association.[7]

Housing Authority of Los Angeles v. *Cordova,* 130 Cal. App. 2d Supp. 883, 279 P. 2d 215 (1955), *Lawson* v. *Housing Authority of Milwaukee,* 270 Wisc. 269, 70 N.W. 2d 605 (1955), *Rudder* v. *United States,* 226 F. 2d 51 (D.C. Cir. 1955), and *Kutcher* v. *Housing Authority of Newark,* 20 N.J. 181, 119 A. 2d 1 (1955), were all cases in which there was a showing of an unconstitutional condition placed upon continued occupancy. Other cases, however, in which there was no showing of such an unconstitutional condition but merely notice to vacate by reason of the lease termination without administrative hearing, sustain the termination and eviction of the tenant. *Walton* v. *City of Phoenix,* supra, *Brand* v. *Chicago Housing Authority,* supra, *Chicago Housing Authority* v. *Ivory,* supra, *Pittsburgh Housing Authority* v. *Turner,* supra, *Columbus Metropolitan Housing Authority* v. *Simpson,* supra.

Cases in which the governmental agency is acting in a judicial or quasi-judicial manner and in which the rights determined arise by virtue of law are not authority against our point here. In this category are *Willner* v. *Committee on Character and Fitness,* 373 U.S. 96, and *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, which held that requirements of procedural

---

[7] In this case the Court cites *Housing Authority* v. *Thorpe* 267 N.C. 431 (1966) the decision of the Supreme Court of North Carolina being considered here, and said: "There, however, the Court found as a matter of fact that whatever may have been plaintiff's reason for terminating the lease, it was neither because the defendant had engaged in efforts to organize the tenants nor because she had been elected President of a tenant's group. It is that factual distinction which makes that decision inapplicable to case at bar."

due process must be met before a state can exclude a person from practicing law. In *Morgan* v. *United States,* 304 U.S. 1, there was no constitutional issue decided but the Court there did refer to the quasi-judicial functions of administrative agencies, in that case the Secretary of Agriculture, in fixing maximum rates at Kansas City Stockyard. To like effect are the deportation cases, holding that there must be an effective review of administrative action by regular judicial branch of the government. *Ng Fung Ho* v. *White,* 259 U.S. 276, held that persons about to be deported were entitled to a judicial determination of their claims that they are citizens of the United States. In *Kwong Hai Chew* v. *Colding,* 344 U.S. 590, the Court did not decide a constitutional issue.[8]

---

[8] In *Sherbert* v. *Verner,* 374 U.S. 398, an unemployment compensation claimant could not be disqualified from these benefits because of her refusal to work on Staurday, based on her religious beliefs. In *Speiser* v. *Randall,* 357 U.S. 513, veterans in California claiming tax exemption could not be required to execute Oath of Non-adversity to Overthrow the Government as a condition to such exemption. *Slochower* v. *Board of Education of New York City,* 350 U.S. 551, the Court found it a denial of due process to discharge an employee merely because he relied upon the Fifth Amendment plea of self-incrimination. In *Torcaso* v. *Watkins,* 367 U.S. 488, the Maryland requirement that a Declaration of Belief in God was a necessary qualification for public office was unconstitutional. In *Wieman* v. *Updegraff,* 344 U.S. 183, the Oklahoma Loyalty Oath for public employees was unconstitutional. In *Shelton* v. *Tucker,* 364 U.S. 479, while there seemed to be no question about the right to discharge a teacher without notice or hearing, it was held that it was unconstitutional to require every teacher as a condition of employment to file annually an affidavit listing every organization to which he has belonged within the preceding five years. Compare *Beilan* v. *Board of Public Education,* 357 U.S. 399, in which the Court held that a Board of Public Education could constitutionally discharge a teacher who refused to answer questions, and *Barsky* v. *Board of Regents,* 347 U.S. 442, upholding the action of New York Board of Regents to suspend license to practice medicine.

In the case at bar the Housing Authority was doing no more than enforcing the terms of its lease, and the courts of the state were available, as the course of events proved, to provide an effective judicial review and remedy for both parties.

The cases decided by lower Federal Courts involving the expulsion of students before they had finished their term of study are clearly not analogous. For one thing, there was no question of refusing to renew a contract, the term of which had expired, by notice provided for in the contract. For example, there was evidence and there were findings that those expulsions were punitive measures taken because of student participation in Civil Rights activities. Such is not the case here. See *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930; *Woods* v. *Wright,* 334 F. 2d 369 (5th Cir. 1964); *Knight* v. *State Board of Education,* 200 F. Supp. 174 (M.D. Tenn. 1961). Moreover, there is a conflict apparently among the lower courts on this subject, *Steier* v. *New York State Education Commissioner,* (CCA 2d) 271 F. 2d 13 (1959).

III.

The Proceedings in the State Court Instituted by the Housing Authority Did Not Deny to the Petitioner Any Constitutional Right

It is apparently not denied that the Petitioner was in the State Courts pursuant to proper summons and was given a fair hearing at all stages of the action, including opportunity to present evidence and to cross-examine witnesses. The constitutional complaint asserted by the Petitioner was resolved against her when the trial court found as a fact that she was not evicted

because of any of her organizational activities as she alleged. For this reason, if that would amount to an unconstitutional condition placed upon the renewal of her lease, it is not before the Court in this case.

The Petitioner having adequate opportunity to do so, the burden is upon her to show in what respect, if any, her constitutional rights were violated. *Snowden* v. *Hughes*, 321 U.S. 1.[9] As Justice Holmes said in *Chin Yow* v. *United States*, 208 U.S. 8: "The courts must deal with the matter somehow, and there seems to be no way so convenient as a trial of the merits before the judge."

The Petitioner is not asking for equal protection of the law; she is asking for a greater protection than that enjoyed by others. The Petitioner cites Professor Jones, but he says that in the welfare state concepts of "traditional law" should prevail in "encounters" between "the poor" and public officials. He praises "our legal orders" which have "achieved a reasonably effective procedure for vindication of such other traditional interest as property rights, contract rights, and rights to compensation for injury caused by another's fault". In this case, the Petitioner was not denied the process of "traditional law". The Housing Authority was re-

[9] In this case Chief Justice Stone said: "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike is not denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself. But a discriminatory purpose is not presumed; there must be a showing of 'clear and intentional discrimination'".

quired by statute and by its lease to apply to the courts and present its case like any other litigant.

The Petitioner in her brief sets out North Carolina statutes relative to Summary Ejectment and, we take it, makes no serious contention that there is anything in the procedures there prescribed that is in violation of the Federal Constitution. Perhaps it should be pointed out that there were substantial discovery procedures available to the Petitioner in the state court, and these for the convenience of the Court are set forth in the Appendix to this brief.

Once in court, the Petitioner not only asserted that the action could not be pursued because the Housing Authority had failed to give her a reason for not wishing to renew her lease and also failed to give her an administrative hearing on that subject, but also at the same time asserted that the reason her lease was not renewed was that she had engaged in some organizational activities among the tenants. Once the Court had determined as a matter of fact that the alleged unconstitutional condition placed upon the renewal of her lease did not exist, she was left with the contention that the action should be dismissed by the Court, either because of the failure of the Housing Authority to come forward with any reasons satisfactory to the Court for its decision not to renew or because the Housing Authority before going into Court had not undertaken to give her a reason or hearing thereon. From Petitioner's brief, it appears that the contention is that the trial court should have dismissed the action on a showing that the Housing Authority had not conducted a hearing prior to the institution thereof.

If that which a Housing Authority can do for no reason it cannot do for an unconstitutional reason, it

does not follow, as a procedural safeguard, that some reason must be stated in order to be sure that it is not unconstitutional. This is somewhat the difference between a demurrer and an answer, and surely it is stretching constitutional requirements to construe them as demanding one rather than the other. It is really difficult here to see how the procedures available were so inadequate and so oppressive and discriminatory upon this Petitioner as to amount to a violation of constitutional requirement.

The crux of the whole matter seems to be, aside from the procedural point, the Petitioner construes the language of the North Carolina Supreme Court as meaning that it would have reached the same result had there been a finding that the Housing Authority was imposing some unconstitutional condition upon the renewal of the lease. This is mere speculation and amounts to asking this Court to reverse the decision of the North Carolina Supreme Court on constitutional grounds because of a possible construction of the meaning of one sentence in its opinion applied to assumed facts not contained in this record. Projecting the speculation, even if the Court had found that the Housing Authority was not an agency of the State, which it did not, it might have felt itself bound by the rule of *Shelley* v. *Kraemer,* 334 U.S. 1, and *March* v. *Alabama,* 326 U.S. 501, to refuse to evict for an unconstitutional condition. Surely, presuming that the North Carolina Court was acting in accord with the Federal Constitution, its language should be read in light of the record before it; and, on that record, it was immaterial what may have been the reason for the Lessor's unwillingness to continue the relationship of landlord and tenant, since no violation of the Constitution had

been shown. Only if it can be said defendant had some right to occupy the dwelling unit conferred upon her by the United States Constitution did the decision of the State Courts enforcing the lease violate that Constitution.

CONCLUSION

No adequate constitutional reason has been shown by the Petitioner for overruling the Judgment of the North Carolina Superior Court, the trial Court in this case. The hearing Petitioner received in the Courts of the State was fair and impartial, giving her an opportunity to be heard and to present any contentions that she may have had concerning her constitutional rights; and the Court in finding the facts in the case acted on competent and adequate evidence. The burden under these circumstances should be upon the Petitioner to show that the Housing Authority and the State Courts have violated some constitutional right that she may possess. In the absence of any such showing, the Judgment of the Court below should be allowed to stand.

Respectfully submitted,

DANIEL K. EDWARDS
WILLIAM Y. MANSON
111 Corcoran Street
Durham, North Carolina
Attorneys for Housing Authority of the City of Durham

APPENDIX

State of North Carolina Statutory Provisions

Selected Provisions of North Carolina Statutes Relating to Examination of Parties

§ 1-568.10. PRELIMINARY PROCEDURE FOR EXAMINATION BEFORE EXAMINING PARTY'S INITIAL PLEADING HAS BEEN FILED.—(a) Before a party has filed his complaint, petition or answer, he may, without notice to other parties, apply to the clerk or judge for an order for the examination of any person who may be examined by him as provided by G.S. 1-568.4.

(b) The application must be in the form of, or supported by, an affidavit showing:

(1) That the action has been commenced and the purpose thereof;

(2) That, in order to prepare his complaint, petition or answer, it is necessary for the applicant to secure information from the person proposed to be examined about certain matters, which matters must be designated with reasonable particularity;

(3) That the information sought is not otherwise available to the applicant, together with a statement of the reasons therefor;

(4) That, if the person proposed to be examined is not a party, the action is being prosecuted or defended in his behalf, together with facts in support thereof;

(5) That the application is made in good faith; and

(6) That the examination should be held at a place designated in the affidavit, together with facts showing the reasons therefor.

(c) If the judge or clerk finds that the facts are as set out in the affidavit, he shall make an order:

(1) Appointing a commissioner to hold the examination;

(2) Fixing the time and place of the examination, subject to the provisions of G.S. 1-568.5;

(3) Directing the person to be examined to appear before the commissioner at such time and place for examination; and

(4) Designating the particular matters about which the person may be examined.

§ 1-568.11. Preliminary Procedure for Examination After Initial Pleadings Have Been Filed.—(a) After a party has filed his complaint, petition or answer, he may, without notice to other parties, apply to the clerk or judge for an order for the examination of any person who has also filed his complaint, petition or answer, as the case may be, or on whose behalf a complaint, petition or answer has been filed as provided by G.S. 1-568.4.

(b) The application must be in the form of, or supported by, an affidavit showing:

(1) That the action has been commenced;

(2) That the applicant has filed complaint, petition or answer;

(3) That the applicant desires to examine a designated person who has filed a petition, complaint or answer or on whose behalf a petition, complaint or answer has been filed;

(4) That the examination should be held at a place designated in the affidavit, together with facts showing the reasons therefor.

(c) If the judge or clerk finds that the facts are as set out in the affidavit, he shall make an order:

(1) Appointing a commissioner to hold the examination;

(2) Fixing the time and place of the examination, subject to the provisions of G.S. 1-568.5; and

(3) Directing the person to be examined to appear before the commissioner at such time and place for examination.

Office-Supreme Court, U.S.
FILED
MAR 17 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

REPLY BRIEF FOR PETITIONER

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
CHARLES H. JONES, JR.
MICHAEL MELTSNER
SHEILA RUSH JONES
10 Columbus Circle
New York, New York 10019

R. MICHAEL FRANK
1238A Carrollburg Place S.W.
Washington, D. C.

M. C. BURT
213½ West Main Street
Durham, North Carolina

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pa. 19104

Attorneys for Petitioner

Of Counsel:
MARTIN GARBUS
EDWARD V. SPARER
HOWARD THORKELSON

INDEX

PAGE

Introduction 1

I. The Judgment Below May Also Be Reversed on the Basis of a New Federal Administrative Rule Adopted February 7, 1967 2

II. The History of the Superseded Policy Relied on by Respondent Shows Its Potential and Purpose for Abuse 8

APPENDIX

Public Housing Administration Circular July 28, 1954 ..... 1a

H.U.D. Circular Dated May 31, 1966 ..... 2a

H.U.D. Circular Dated February 7, 1967 ..... 4a

TABLE OF CASES

Ashwander v. T.V.A., 297 U.S. 288 8

Bowles v. Strickland, 151 F.2d 419 (5th Cir. 1945) 4
Bruner v. United States, 343 U.S. 112 3

Congress of Racial Equality v. Clinton, 346 F.2d 911 (5th Cir. 1964) 4

Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961), cert. denied 368 U.S. 930 7
Doughty v. Maxwell, 376 U.S. 202 5

Ex parte Collett, 337 U.S. 55 4

PAGE

Gideon v. Wainwright, 372 U.S. 335 5

Gonzalez v. Freeman, 334 F.2d 570 (D.C. Cir. 1964) 7
Griffin v. California, 380 U.S. 609 5

Hamm v. Rock Hill, 379 U.S. 306 4
Hoadley v. San Francisco, 94 U.S. 4 4
Hyser v. Reed, 318 F.2d 225 (D.C. Cir. 1963), cert. denied, 375 U.S. 957 7

Johnson v. New Jersey, 384 U.S. 719 5

Linkletter v. Walker, 381 U.S. 618 4

Mapp v. Ohio, 367 U.S. 643 ..... 4, 5
Massey v. United States, 291 U.S. 608 4

O'Connor v. Ohio, 385 U.S. 92 5
Orr v. United States, 174 F.2d 577 (2nd Cir. 1949) 4

Rachel v. Georgia, 342 F.2d 336 (5th Cir. 1965) 4
Rudder v. United States, 105 A.2d 741 (D.C. Mun. App. 1954), reversed 226 F.2d 51 (D.C. Cir. 1955) 9, 10, 11

Schoen v. Mountain Producers Corporation, 170 F.2d 707 (3rd Cir. 1948) 4

United States v. Chambers, 291 U.S. 217 4
United States v. LaValfee, 330 F.2d 303 (2nd Cir. 1964) 5
United States v. Schooner Peggy, 1 Cranch. 103 4

PAGE

Statutes:

Act August 31, 1951, c. 376, Title I, § 101, 65 Stat. 277 10

Act July 5, 1952, c. 578, Title I, § 101, 66 Stat. 403 10

Act July 31, 1953, c. 302, Title I, § 101, 67 Stat. 307 10

42 U.S.C. § 1404(a) 3

42 U.S.C. § 1408 3

42 U.S.C. § 1411(c), Gwinn Amendment 10

42 U.S.C. § 1434 3

Other Authorities:

Local Housing Authority Management Handbook, Part IV, Section 1—Occupancy Policies, Department of Housing and Urban Development (July 1965) 8, 9

41 Op. Atty. Gen., April 26 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

REPLY BRIEF FOR PETITIONER

Introduction

On February 7, 1967, after petitioner's brief was filed in this Court, the Department of Housing and Urban Development issued a directive to all local housing authorities prescribing new procedures for the eviction of low income public housing tenants. The new federal requirement refutes the argument made by the respondent Housing Authority in this case that its action conforms with the federal administrative policy.[1] More importantly, the new federally prescribed procedures may afford a new and independent ground for reversal of the judgment of the North Carolina courts in petitioner's case. We discuss the new procedural requirements and their relationship to this case in part I, *infra.*

In part II, *infra,* we discuss the previous policy of the federal Public Housing Administration,[1a] relied upon by respondent to justify its actions in petitioner's case.

---

[1] See "Brief for Housing Authority of the City of Durham," p. 11.

[1a] Now the Housing Assistance Administration of the Department of Housing and Urban Development.

I.

The Judgment Below May Also Be Reversed on the Basis of a New Federal Administrative Rule Adopted February 7, 1967.

The February 7, 1967, circular issued to all local housing authorities by Mr. Don Hummel, who is Assistant Secretary for Renewal and Housing Assistance of the Department of Housing and Urban Development (hereinafter referred to as HUD), is reproduced in the appendix to this brief, *infra*, pp. 4a-6a.

The circular first makes reference to pending lawsuits "challenging the right of a Local Authority to evict a tenant without advising him of the reasons for such eviction." It then states:

> Since this is a federally assisted program, we believe it is essential that no tenant be given notice to vacate without being told by the Local Authority, in a private conference or other appropriate manner, the reasons for the eviction, and given an opportunity to make such reply or explanation as he may wish.

The directive then provides that, in addition to informing the tenant of the reason for any proposed eviction, each local authority shall maintain written records of every eviction which are to be available for review by HUD representatives, and should contain certain specified information. This circular superseded a prior circular dated May 31, 1966, which is reproduced in the appendix hereto, *infra*, p. 2a. The May 31, 1966, circular had stated that the Public Housing Administration "strongly urge[d], as a matter of good social policy, that Local Authorities in a private conference inform any tenants

who are given such notices of the reasons for . . . [eviction]."

The circular issued February 7, 1967, unlike the earlier circular, contains mandatory language. The authority of the federal agency to make such rules and regulations is conferred by the federal housing laws.[2] We believe that the new federal rule confers rights enforceable by individual low-income tenants, and submit that whatever may be the full scope of the individual rights conferred by the new rule, it must at least be available as a defense to a suit maintained in a state court by a local housing authority seeking to evict a tenant in violation of the rule.

It is plain, we think, that if the present rule had been in effect when the respondent sued to evict Mrs. Thorpe in September 1965, Mrs. Thorpe would have had a complete defense to the suit. Under the Supremacy Clause the state courts would have been bound to recognize her defense that the Durham Authority issued its notice cancelling her lease in violation of the governing federal procedural requirement.

We urge that this newly adopted procedural rule should now be applied to petitioner's case in accordance with the generally applicable principle that modal or procedural changes will be applied to pending litigation. This general tendency to apply new procedural regulations to pending cases is very strongly developed in the law. The policy is to apply the law as it exists at the time a court is called upon to decide pending litigation. It is exemplified by such cases as *Bruner* v. *United States*, 343 U.S.

---

[2] See 42 U.S.C. § 1408. See also, 42 U.S.C. § 1404a. The authority of the federal agency to require records to be maintained is conferred by 42 U.S.C. § 1434.

112 (suit by employee against United States; pending certiorari in Supreme Court on question of jurisdiction of district court Congress amended statute making it clear that there was no such jurisdiction; the new statutory rule was applied to the pending case); *Ex parte Collett*, 337 U.S. 55 (new code provision applying *forum non conveniens* to FELA cases applied to pending case); *Orr* v. *United States*, 174 F.2d 577 (2nd Cir. 1949) (change in venue provisions applied in pending case); *Schoen* v. *Mountain Producers Corporation*, 170 F.2d 707 (3rd Cir. 1948) (change in rule of *forum non conveniens* applied in pending case); *Bowles* v. *Strickland*, 151 F.2d 419 (5th Cir. 1945) (procedural rule change relating to filing of suit under Emergency Price Control Act applied in pending case); *Hoadley* v. *San Francisco*, 94 U.S. 4 (change in removal statute applicable to case pending in state court); and *Congress of Racial Equality* v. *Clinton*, 346 F.2d 911 (5th Cir. 1964), and *Rachel* v. *Georgia*, 342 F.2d 336 (5th Cir. 1965) (change in statute to allow appeal of remand order in civil rights removal case applied to pending cases).

Of course, *Hamm* v. *Rock Hill*, 379 U.S. 306, illustrates the application of the rule applying a new statute to decide substantive rights in a pending case. See also, *United States* v. *Schooner Peggy*, 1 Cranch. 103; *United States* v. *Chambers*, 291 U.S. 217; *Massey* v. *United States*, 291 U.S. 608. The effectuation of the purpose of the new statutory regulation, as perceived by this Court, was strongly influential in these cases. And, similarly, in deciding whether or not to apply new judicial decisions to pending cases—or even retrospectively to cases which have become final—the Court has looked to the purpose of the rule involved.[3]

---

[3] See, for example, *Linkletter* v. *Walker*, 381 U.S. 618, holding that the rule of *Mapp* v. *Ohio*, 367 U.S. 643, would be applied only prospec-

Application of the new HUD rule of February 7, 1967, in this case is justified by a variety of considerations, including the language of the circular, its purpose, and the general tendency of this Court's decisions, just discussed, to apply procedural innovations to pending cases.

First, we believe that analysis of the language of the circular supports its application to petitioner's case. The first paragraph of the circular (appendix, *infra*, p. 4a) which refers to the dissatisfaction caused by the prior practices and the litigation filed throughout the United States challenging those practices, reflects a concern for doing justice for the individuals who have focused attention on the practice. The second paragraph (*ibid.*) prescribing an "essential" requirement that a tenant be told the reasons for the eviction and "given an opportunity to make such reply or explanation as he may wish" is timeless. The paragraph contains no language of futurity. In contrast, the third paragraph (*ibid.*), establishing a record-keeping requirement, does expressly refer to the future and applies "from this date," i.e., February 7, 1967. The final paragraph, which says that the earlier circular (strongly urging that tenants be told reasons for eviction) is now superseded, is also suggestive of a displacement of policy in a manner consistent with retroactivity.

Second, just as was true with respect to the federal policy in *Hamm* v. *Rock Hill*, 379 U.S. 306, it is fair and

---

tively because the purpose of the rule was to deter unlawful conduct, and this purpose would not be served by retrospective application of the exclusionary rule. Of course, the *Mapp* decision was applied to cases pending on appeal at the time of *Mapp*. *Johnson* v. *New Jersey*, 384 U.S. 719, 732. See also, *O'Connor* v. *Ohio*, 385 U.S. 92, which applies the Fifth Amendment principle of *Griffin* v. *California*, 380 U.S. 609, to a pending case. And see the decisions giving retrospective effect to the right to counsel as declared in *Gideon* v. *Wainwright*, 372 U.S. 335, e.g., *Doughty* v. *Maxwell*, 376 U.S. 202; *United States* v. *LaVallee*, 330 F.2d 303 (2nd Cir. 1964).

just to apply the new and more enlightened policy so that it will benefit those whose protests prompted the new rule.

Third, this case involves a procedural regulation in the classic sense; it relates to notice and the right to be heard. The new rule requires procedural safeguards prior to the initiation of an action to evict, but does not deprive the local housing authority of its right to maintain eviction proceedings after compliance with the prescribed procedures. The requirement would not be duplicated or wasteful since the respondent authority has never given petitioner the benefit of such procedures.

There remains, of course, the question of whether the new federal administrative rule conforms to the requirements of the Constitution and does actually provide procedures sufficient to protect petitioner's rights under the Due Process Clause. We have argued in our Brief that petitioner was entitled to notice of the reason her low income housing benefits were cancelled and also was entitled to an administrative hearing in order to contest the factual basis for the local authority's action. The HUD circular of February 7, 1967, is not explicit with respect to several important matters affecting the constitutional claim. We urge that the Court construe the HUD rule to require at least the minimum safeguards necessary to afford basic fairness.

The HUD circular states that tenants must be told "the reasons for the eviction" and that the records shall contain a statement of "Specific reason(s) for notice to vacate." It indicates that "if a tenant is being evicted because of undesirable actions, the record should detail the actions which resulted in the determination that eviction should be instituted." We urge that the Court construe these provisions to mean that tenants must be ad-

vised of the facts on the basis of which the agency proposes to take action, including a statement of the information on the basis of which the agency believes the facts asserted to be true.

The HUD circular does not use the word "hearing" but, rather, refers to notice being given "in a private conference or other appropriate manner" and states that the tenant should be "given an opportunity to make such reply or explanation as he may wish." HUD also requires that a record be kept including, *inter alia,* a "summary of any conferences with tenant[s], including names of conference participants." We urge that these provisions be interpreted to include the right to be heard in person or by counsel at such a hearing or "conference," and also to include fair opportunities to challenge the grounds of the local authority's proposed action, to probe the facts relied upon by the authority, and to present the tenant's own version of the facts. The provision should also be interpreted to include a requirement that the agency decision be rendered on the basis of the facts presented to it.

It should be stated that petitioner does not contend that due process necessarily requires in all cases any particular set of judicial-type hearing rules or common law evidentiary principles. We contend only for such procedures as may reasonably be necessary to give a complete and fair airing of the controverted facts. The detailed requirements will, of course, depend upon the circumstances of the particular case.[4]

---

[4] Note, for example, the minimum requirements adopted by the Court of Appeals for the Fifth Circuit in a state college expulsion case. *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150, 158-159 (5th Cir. 1961), cert. denied 368 U.S. 930. Cf. the procedures for parole revocation set forth in *Hyser* v. *Reed,* 318 F.2d 225 (D.C. Cir. 1963), cert. denied, 375 U.S. 957. Cf. also, *Gonzalez* v. *Freeman,* 334 F.2d 570, 578 (D.C. Cir. 1964), involving the basic standards necessary to insure fairness prior to debarment from participating in government contracts.

If this Court agrees with petitioner's view that the new HUD regulation gives the sort of full and fair hearing which we have just described, there is, of course, an additional reason to apply the new procedure to petitioner's case. Such an application, affording petitioner the full measure of relief sought in the present case, would permit the Court to avoid unnecessary decision of constitutional questions. See *Ashwander* v. *T.V.A.*, 297 U.S. 288, 341 *et seq.*. (Mr. Justice Brandeis dissenting in part). Such a route to disposition of the case would justify reversal of the judgments below and a remand of the cause with directions to set aside the eviction, leaving the authority to take such further steps as may be conformable to law.

II.

The History of the Superseded Policy Relied on by Respondent Shows Its Potential and Purpose for Abuse.

The Brief of the Housing Authority of the City of Durham, p. 11, argues that: "In following the provisions of the lease and the published directives of the Federal Public Housing Administration the local Housing Authority did not act arbitrarily." In a footnote to the sentence just quoted, the Authority's Brief sets out a portion of a provision in an HUD publication known as the LOCAL HOUSING AUTHORITY MANAGEMENT HANDBOOK, PART IV, SECTION 1 —OCCUPANCY POLICIES (July 1965), p. 8. We quote the entire subparagraph:

> 6.d. It is recommended that each Local Authority's lease:
>
> (1) Be drawn on a month-to-month basis whenever possible. This should permit any necessary evictions to be accomplished with a mini-

mum of delay and expense upon the giving of a statutory Notice To Quit.[5]

(2) Contain no provision absolving the Local Authority from liability for its own negligence.

(3) If Local Authority policy provides for charges for utility consumption in excess of specified amounts, contain a provision obligating the tenant to pay amounts assessed by the Local Authority for overconsumption of utilities.

Of course, as we have shown in part I, *supra*, the federal administrative policies upon which respondent relies have now been superseded by new and more enlightened policies which, far from condoning a refusal to disclose the grounds of an eviction notice, compel disclosure and a fair opportunity to reply. But, in any event, the former federal policy invoked by respondent, and which was in effect at the time of the notice to vacate in this case, displays in its language, and its history, the clearest example of potential and purpose for abuse, and gives compelling force to petitioner's constitutional claims.

The recommendation was first made to local housing authorities in a Public Housing Administration circular dated July 28, 1954, which is reproduced in the appendix, *infra*, p. 1a. The circular states that it was issued in response to the ruling of the Municipal Court of Appeals for the District of Columbia in *Rudder* v. *United States*, 105 A.2d 741 (D.C. Mun. App. 1954), subsequently reversed 226 F.2d 51 (D.C. Cir. 1955). *Rudder* involved a constitu-

[5] Note the difference between the wording of 6.d(1) above and the language quoted in the Authority's brief which contains the words "without stating reasons for such notice" at the end of the second sentence. It may be that the Authority's brief quotes an earlier edition of the Handbook.

tional challenge to the so-called Gwinn Amendment, temporary legislation which formerly barred subversives from occupying public housing units.[6] The Municipal Court of Appeals held in *Rudder* that since the local agency invoked the Gwinn Amendment provision in its lease to evict the tenants, the tenants could defend the eviction on the ground that the eviction was unlawful by attacking the constitutionality of the Gwinn Amendment. The court sustained the eviction by holding the Gwinn Amendment valid. The July 28, 1954, circular (appendix, *infra*, p. 1a) was issued in response to this decision and before the District of Columbia Circuit reversed the eviction order. The circular summarized the *Rudder* litigation and said that the agency could have terminated the monthly tenancy by serving a statutory notice to evict without revealing its reasons, but had erred by assigning a specific reason that could be challenged as unconstitutional. The circular concluded:

> In light of this decision it is suggested that all existing tenant lease forms be reviewed to determine whether there are contained therein any provisions which might be interpreted by a Court as being contrary to a simple monthly tenancy, thus precluding tenancy being terminated by merely giving the statutory Notice to Quit. It is also suggested that all future Notices to Quit cite only the provision of the lease which permits termination within a specified time without reference to any other provision.

---

[6] The Gwinn Amendment was former section 1411(c) of Title 42 of the U. S. Code. The provisions were contained in three appropriations acts. See Act, Aug. 31, 1951, c. 376, Title I, § 101, 65 Stat. 277; Act July 5, 1952, c. 578, Title I, § 101, 66 Stat. 403; Act July 31, 1953, c. 302, Title I, § 101, 67 Stat. 307. The Attorney General ruled that the Gwinn Amendment was temporary legislation which has expired. 41 Ops. Att'y. Gen., April 26. Note, however, that the lease in the instant case still contains an anti-subversive provision (R. 17).

Thus the Federal Government originally urged the local housing authorities to terminate without giving reasons for the specific purpose of enabling them to evict people for reasons that might be challenged as without factual basis or as violative of federal constitutional rights—in the *Rudder* case, rights protected by the First Amendment —by evicting only under a provision that did not require giving a reason for the action. Thus the government in 1954 encouraged precisely the kind of misuse of a termination provision that petitioner challenges here; that is, the housing authority concealing a possibly unconstitutional motive behind an eviction for which no reason need be given.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
CHARLES H. JONES, JR.
MICHAEL MELTSNER
SHEILA RUSH JONES
10 Columbus Circle
New York, New York 10019

R. MICHAEL FRANK
1238A Carrollburg Place S.W.
Washington, D. C.

M. C. BURT
213½ West Main Street
Durham, North Carolina

ANTHONY G. AMSTERDAM
3400 Chestnut Street
Philadelphia, Pa. 19104

Attorneys for Petitioner

Of Counsel:

MARTIN GARBUS
EDWARD V. SPARER
HOWARD THORKELSON

PUBLIC HOUSING ADMINISTRATION

HOUSING AND HOME FINANCE AGENCY — WASHINGTON 25, D. C.

CIRCULAR
7-28-54

TO: Local Authorities
Field Office Directors

SUBJECT: Decision in Rudder v. US of A and Its Importance Re Tenant Lease Forms

The decision made in the case of John Rudder and Doris Rudder, Appellants, v. United States of America, Appellee, No. 1129 in the Municipal Court of Appeals for the District of Columbia, on June 9, 1954, is one which should be of interest to all Local Authorities as it affects the issuance of Notices To Vacate and the right to evict any tenant, either in the Lanham Act or the low-rent program.

The questions at issue were whether the U.S. Government (National Capital Housing Authority) is required to reveal its reason for seeking to terminate tenancy and whether, if a reason were given, the tenant had the right to defend on the ground that the reason given was improper or unlawful. The Appellate Court stated that the Government, like any private landlord, has the right to terminate a monthly tenancy by serving a statutory Notice To Quit without revealing the reason therefor, providing, that such action is in accord with the existing lease agreement with the tenant. Although, in this case, the lease agreement did provide for termination upon 30 days' notice, the Housing Authority included in the lease a provision that it could be terminated for any one of eight listed reasons. The Appellate Court held that the Government in citing one such reason in its Notice To Quit was in effect saying that eviction would be sought only for one or more of these eight stated reasons. It therefore held that the Trial Court should have entertained the defense of the tenant. However, because of another more compelling consideration the Appellate Court did not reverse the decision of the Trial Court.

In light of this decision it is suggested that all existing tenant lease forms be reviewed to determine whether there are contained therein any provisions which might be interpreted by a Court as being contrary to a simple monthly tenancy, thus precluding tenancy being terminated by merely giving the statutory Notice To Quit. It is also suggested that all future Notices To Quit cite only the provision of the lease which permits termination within a specified time without reference to any other provision.

John D. Carmichael
Acting Commissioner

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC HOUSING ADMINISTRATION

WASHINGTON D.C. 20413

CIRCULAR
5-31-66

TO: Local Authorities
Regional Directors
Central Office Division and Branch Heads

FROM: Commissioner

SUBJECT: Terminations of tenancy in low-rent projects

The Public Housing Administration has for a number of years recommended that tenant leases be drawn on a month-to-month basis noting that this practice should permit any necessary evictions to be accomplished upon the giving of a notice to vacate. There is as you may be aware growing opposition and challenge from individuals and organizations to the practice of simply giving the statutory notice without stating the reason or reasons therefor.

In connection with the above practice, we strongly urge, as a matter of good social policy, that Local Authorities in a private conference inform any tenants who are given such notices of the reasons for this action.

Also, not all Local Authorities have kept their tenant lease forms current with the result that, in some cases, obsolete and unenforceable lease conditions are being challenged legally. We urge that all Local Authorities review their lease forms and remove any such conditions. Regional Offices will provide advice and assistance in connection with such reviews as may be desired.

Marie C. McGuire
Commissioner

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR RENEWAL AND HOUSING ASSISTANCE

CIRCULAR
2-7-67

TO: Local Housing Authorities
Assistant Regional Administrators for Housing Assistance
HAA Division and Branch Heads

FROM: Don Hummel

SUBJECT: Terminations of Tenancy in Low-Rent Projects

Within the past year increasing dissatisfaction has been expressed with eviction practices in public low-rent housing projects. During that period a number of suits have been filed throughout the United States generally challenging the right of a Local Authority to evict a tenant without advising him of the reasons for such eviction.

Since this is a federally assisted program, we believe it is essential that no tenant be given notice to vacate without being told by the Local Authority, in a private conference or other appropriate manner, the reasons for the eviction, and given an opportunity to make such reply or explanation as he may wish.

In addition to informing the tenant of the reason(s) for any proposed eviction action, from this date each Local Authority shall maintain a written record of every eviction from its federally assisted public housing. Such records are to be available for review from time to time by HUD representatives and shall contain the following information:

1. Name of tenant and identification of unit occupied.

2. Date of notice to vacate.

3. Specific reason(s) for notice to vacate. For example, if a tenant is being evicted because of undesirable actions, the record should detail the actions which resulted in the determination that eviction should be instituted.

(Cont'd)

(See Opposite)

4. Date and method of notifying tenant with summary of any conferences with tenant, including names of conference participants.

5. Date and description of final action taken.

The Circular on the above subject from the PHA Commissioner, dated May 31, 1966, is superseded by this Circular.

Assistant Secretary for Renewal
and Housing Assistance